

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

EVDOKIA NIKOLOVA ) Docket No. A 19-CA-877 RP  
 )  
vs. ) Austin, Texas  
 )  
UNIVERSITY OF TEXAS )  
AT AUSTIN ) March 10, 2022

TRANSCRIPT OF TRIAL TESTIMONY OF THOMAS GLASS  
BEFORE THE HONORABLE ROBERT L. PITMAN

APPEARANCES:

For the Plaintiff: Mr. Robert W. Schmidt  
Crews Law Firm, P.C.  
701 Brazos Street, Suite 900  
Austin, Texas 78701  
  
Mr. Robert S. Notzon  
Law Office of Robert Notzon  
1502 West Avenue  
Austin, Texas 78701  
  
For the Defendant: Mr. Benjamin L. Dower  
Ms. Amy S. Hilton  
Texas Attorney General's Office  
300 West 15th Street  
Austin, Texas 78701  
  
Court Reporter: Ms. Lily Iva Reznik, CRR, RMR  
501 West 5th Street, Suite 4153  
Austin, Texas 78701  
(512) 391-8792

Proceedings reported by computerized stenography,  
transcript produced by computer-aided transcription.

1 MR. SCHMIDT: We call, your Honor, Tom Glass  
00:00:01 2 to the witness stand.

00:00:27 3 MR. DOWER: Your Honor, before this witness  
00:00:29 4 starts testifying, can we ensure that our expert who's  
00:00:31 5 going to be providing rebuttal is present?

00:00:33 6 THE COURT: Sure. Sir, before you take a  
00:00:35 7 seat, can you please raise your right hand to be sworn.

00:00:38 8 THE CLERK: You do solemnly swear or affirm  
00:00:38 9 that the testimony which you may give in the case now  
00:00:38 10 before the Court shall be the truth, the whole truth,  
00:00:45 11 and nothing but the truth?

00:00:45 12 THE WITNESS: I do.

00:00:45 13 THE COURT: Please be seated. You can go  
00:00:56 14 ahead and start the preliminaries if you want his name  
00:00:57 15 and credentials.

00:01:00 16 THOMAS GLASS, called by the Plaintiff, duly sworn.

00:01:00 17 DIRECT EXAMINATION

00:01:01 18 BY MR. SCHMIDT:

00:01:01 19 Q. Would you introduce yourself to the jury?

00:01:03 20 A. My name is Tom Glass. Thomas Glass.

00:01:07 21 Q. And can you tell us a little bit about yourself?

00:01:09 22 A. I have a Bachelor's Degree in Business. I stayed  
00:01:16 23 long and got a Master's Degree in Accounting. Later in  
00:01:18 24 life, I went back and got a Master's Degree and a Ph.D.  
00:01:22 25 in Economics. I've been a Certified Public Accountant

00:01:27 1 since 1967 and I have -- I've practiced accounting for  
00:01:35 2 many years and actually just did my last tax return last  
00:01:39 3 year. And I have been doing this kind of work  
00:01:45 4 increasingly since the late 1980s. I've testified in  
00:01:50 5 about 125 cases. I've been hired in over 500 cases.  
00:01:58 6 And the kind of testimony I'm giving today is indicative  
00:02:03 7 of the type of testimony I've given quite often.

00:02:07 8 Q. So Dr. Glass, Ph.D., correct?

00:02:09 9 A. Yes.

00:02:10 10 Q. All right. And if I'm just a shorthand guy,  
00:02:15 11 you're a numbers guy; is that right?

00:02:16 12 A. I am a number cruncher, yes.

00:02:21 13 Q. Okay. So we've asked you to look at the issues  
00:02:26 14 in this case. Not issues but the numbers in this case  
00:02:29 15 and provide -- actually, what have we asked you to do?

00:02:34 16 A. Yes. You asked me to take a look and make  
00:02:38 17 certain assumptions about Dr. Nikolova's compensation in  
00:02:43 18 the future, and what it was likely going to be, and what  
00:02:46 19 it would be under several different scenarios.

00:02:50 20 Q. And I believe there might also be issues not only  
00:02:53 21 in the future but in the past, some backpay?

00:02:56 22 A. Yes. Yes.

00:02:57 23 Q. Okay.

00:02:58 24 A. Since she was denied tenure, yes.

00:03:00 25 Q. Okay. And so, can you explain, what is the

00:03:04 1 process that you use? How do you do this?

00:03:06 2 A. Well, we use a -- what I call a "but for"  
00:03:12 3 analogy. But for the action that she complains about,  
00:03:16 4 what is likely to happen in the past and in the future,  
00:03:21 5 and what's the difference between what she could have  
00:03:23 6 made had she been granted tenure in 2019. First is what  
00:03:30 7 she's likely going to make as a result of being denied  
00:03:33 8 tenure.

00:03:35 9 Q. And how do you come up with these numbers? How  
00:03:38 10 do you figure that out?

00:03:38 11 A. Well, we know what she was actually making at the  
00:03:42 12 time that she was denied tenure. We know what a  
00:03:48 13 similarly situated colleague of her was making after he  
00:03:51 14 was granted tenure in 2019. And then, the Social  
00:03:58 15 Security Administration Board of Trustees has to make  
00:04:02 16 long-term projections about the health of the Social  
00:04:05 17 Security system, and they've got a board of trustees --  
00:04:09 18 a board of actuaries who project what increases in pay  
00:04:16 19 is going to be actually for the next 75 years. So they  
00:04:20 20 have a -- and it's well thought of in the economic  
00:04:26 21 community as a fairly accurate predictor of what  
00:04:33 22 salaries are going to be.

00:04:34 23 So we take the salaries that she was making in  
00:04:37 24 2019 and we take the salary that the tenured professor  
00:04:40 25 was making in 2019, and then, we increase those by what

00:04:44 1 the Social Security Administration says the average  
00:04:48 2 increase for all American workers is going to be for  
00:04:51 3 each year till her projected retirement; and then, we  
00:04:57 4 sum all those up and do some magic and put numbers on a  
00:05:02 5 piece of paper.

00:05:02 6 Q. And by magic, you're talking about crunching  
00:05:06 7 data?

00:05:06 8 A. Crunching data. The one thing I haven't talked  
00:05:09 9 about is, if she is -- if the jury decides she's  
00:05:16 10 entitled to damages, she will be paid that money today  
00:05:18 11 or in the near future, instead of the money getting paid  
00:05:22 12 out to her over her next 30 or 40 years. And so, to  
00:05:30 13 know that she would be able to invest those moneys and  
00:05:33 14 earn interest on that, we do a process called  
00:05:37 15 discounting. And we use interest rates on a safe  
00:05:43 16 investment, which we use United States treasury bonds,  
00:05:49 17 and we discount that money back to what's called present  
00:05:52 18 value.

00:05:53 19 Such that if you put all that money that  
00:05:57 20 you're going to give her into a savings account, she  
00:06:00 21 would be able to draw out the amount of money that we're  
00:06:02 22 projecting that she would lose over the next several  
00:06:05 23 years.

00:06:06 24 Q. So if I'm understanding you correctly, \$100,000  
00:06:12 25 now is different than \$100,000 paid out over the course

00:06:16 1 of time.

00:06:17 2 A. Right. If you want somebody to be able to get  
00:06:19 3 \$100,000 in 10 years, you don't give them \$100,000  
00:06:24 4 today. You give them a lesser amount of money so that  
00:06:26 5 they can take that 100 -- that 90,000 and invest it and  
00:06:32 6 at the end of 10 years, it will be \$100,000.

00:06:35 7 Q. So it's reduced for the time value of money?

00:06:37 8 A. Exactly.

00:06:38 9 Q. Okay. And so, talk with us about are there any  
00:06:46 10 other factors you take into account in this case? Is  
00:06:48 11 there -- retirement play a role in this?

00:06:51 12 A. Well, the Department of Labor publishes  
00:06:55 13 statistics on how long a person of a particular sex and  
00:07:03 14 education and age is likely going to work in the future.  
00:07:05 15 So, for instance, Dr. Nikolova at the time of her denied  
00:07:12 16 tenure, based upon her age and education that she has a  
00:07:17 17 Ph.D., she had a work life expectancy to age 65.6. In  
00:07:25 18 other words, the average person in that category of  
00:07:29 19 demographics would work until they were 65.6. She has  
00:07:34 20 expressed an interest of working until age 70, which is  
00:07:40 21 very, very common for Ph.D.s.

00:07:42 22 I'm 79 years old and I'm still working. So I  
00:07:46 23 have made alternative computations, one to age 65.6 and,  
00:07:52 24 secondly, to age 70.

00:07:54 25 Q. Okay. Let's offer into exhibit the next number

00:08:03 1 that we're at is Plaintiff's Exhibit 238, I believe.

00:08:18 2 MR. DOWER: So you're going to be offering.

00:08:19 3 MR. SCHMIDT: The charts.

00:08:20 4 MR. DOWER: The new charts -- I don't think  
00:08:22 5 -- I might have missed it, but I don't think you've  
00:08:24 6 covered -- laid the foundation for changes.

00:08:29 7 MR. SCHMIDT: Okay.

00:08:29 8 MR. DOWER: Can you just lay that foundation  
00:08:32 9 first?

00:08:33 10 Q. (BY MR. SCHMIDT) Dr. Glass, in this lawsuit, you  
00:08:39 11 provided an expert report some months or possibly years  
00:08:44 12 ago, correct?

00:08:44 13 A. I did.

00:08:45 14 Q. And today, because that report was based on a  
00:08:49 15 trial date, you're calculating the damages up to the  
00:08:53 16 date of trial, correct?

00:08:54 17 A. Right. And the primary difference, 99 percent of  
00:08:59 18 the difference between my report of last year and my  
00:09:02 19 report of this year is that the interest rates that  
00:09:06 20 we're talking about that I've used for discounting have  
00:09:09 21 gone substantially up, which reduces her damages because  
00:09:13 22 she's -- it reduces the amount of money that you would  
00:09:17 23 have to give her today to pay out the money in future.

00:09:21 24 Q. But also, at the time that you submitted that  
00:09:24 25 report, I think there was a different trial date that

00:09:26 1 was earlier in time?

00:09:28 2 A. Right.

00:09:28 3 Q. And so, you've also extended it out to meet  
00:09:31 4 today's trial date?

00:09:32 5 A. That's correct.

00:09:32 6 Q. Okay. So with that, we would offer Plaintiff's  
00:09:38 7 Exhibit 236.

00:09:39 8 THE COURT: Any objection?

00:09:40 9 MR. DOWER: Well, your Honor, what he just  
00:09:46 10 said I don't think was accurate. I think the numbers  
00:09:49 11 have actually gone up, not down, just looking at the  
00:09:52 12 comparison between the two charts. But can you ask him  
00:10:02 13 what the other one percent was? He said 99 percent.

00:10:05 14 MR. SCHMIDT: I think he said it was the  
00:10:07 15 different -- the interest rate, different kind of --

00:10:09 16 Q. (BY MR. SCHMIDT) Dr. Glass, part of the change in  
00:10:12 17 this is that it's updated to this trial, correct?

00:10:14 18 A. Yes.

00:10:14 19 Q. And then, you also mentioned that there was  
00:10:17 20 another change that you've made because of a change in  
00:10:20 21 interest rates?

00:10:21 22 A. Right.

00:10:22 23 Q. Can you explain that?

00:10:23 24 A. Interest rates have increased since, I think,  
00:10:28 25 June of 2020 is when I -- '21 is when I produced my



00:10:34 1 original report. Interest rates have increased, and  
00:10:36 2 therefore, the present value of the future losses has  
00:10:39 3 gone down. And I think the numbers are down from what  
00:10:47 4 my earlier report is, but if not, I can explain that.

00:10:50 5 Q. Well, it may be down for that reason, but then,  
00:10:52 6 they're up because it's a longer period of time. Does  
00:10:56 7 that make sense?

00:10:56 8 A. Yes.

00:10:57 9 MR. DOWER: Mr. Schmidt, if you'll agree to  
00:11:01 10 do the same redactions you did on 236, I will not  
00:11:05 11 object.

00:11:09 12 MR. SCHMIDT: Yes. And I think this is  
00:11:11 13 redacted.

00:11:13 14 MR. DOWER: Not the one you gave me. No  
00:11:29 15 objection.

00:11:29 16 THE COURT: All right. So admitted. Thank  
00:11:31 17 you.

00:11:31 18 Q. (BY MR. SCHMIDT) Okay. So do you have a copy of  
00:11:35 19 your report?

00:11:35 20 A. I do.

00:11:36 21 Q. Okay. So I'm going to put up -- let me put up  
00:11:54 22 the charts and have you go through them. Does that make  
00:11:56 23 sense to you?

00:11:57 24 A. Yes.

00:11:57 25 Q. Okay. This is a chart that you've compiled to

00:12:06 1 talk about the economic damages in this case; is that  
00:12:10 2 right?

00:12:10 3 A. Yes.

00:12:10 4 Q. And can you walk us through what -- how you  
00:12:15 5 calculated those damages and what they are?

00:12:16 6 A. Okay. The -- I show here, this is the to age  
00:12:24 7 65.6. And I show the three different scenarios that we  
00:12:30 8 were talking about, and what we're talking about here is  
00:12:34 9 the difference between what she would have made had she  
00:12:39 10 been granted tenure in 2019. And then, the scenario No.  
00:12:47 11 1 is the tenure was not granted on September 1, 2019,  
00:12:53 12 but assuming that tenure would be granted, effective  
00:12:57 13 9-10-2023, four years later. And I show that the  
00:13:02 14 differences in what she would have made had she been  
00:13:04 15 granted tenure and what she will make if she's granted  
00:13:09 16 tenure in 9-1-2023, to the date of trial, her lost is  
00:13:16 17 \$44,500. The future losses are 274,001, and so, her  
00:13:24 18 total losses would be \$318,501.

00:13:31 19 Now, the scenario number two --

00:13:33 20 Q. Before you go there, can you explain if her  
00:13:36 21 losses to date of trial are 44,500, how do you project  
00:13:42 22 future losses?

00:13:43 23 A. Then the future losses, I take the amounts of  
00:13:47 24 money that she was -- would be making in 2023 and I,  
00:13:52 25 again, project out at the Social Security

00:13:55 1 Administration's rate of increase, and then, I used the  
00:13:58 2 discount rates we're talking about and I add all those  
00:14:02 3 up, and they come up to 274,000.

00:14:06 4 Q. But I guess even more fundamental question -- and  
00:14:11 5 I'm not a math guy -- is that so she gets tenure two  
00:14:15 6 years late in her career. Is it your -- can you  
00:14:20 7 explain, then, why getting tenure two years late in your  
00:14:23 8 career will then cause losses into the future?

00:14:27 9 A. Well, I think most of us would have experience  
00:14:30 10 with lots of different things that you just don't get  
00:14:35 11 caught up. If your neighbor got a raise last year and  
00:14:40 12 you don't get a raise till next year, is there any  
00:14:43 13 reason to believe that you would ever catch up to him?  
00:14:47 14 He will continue to get raises and you will continue to  
00:14:50 15 get raises. So there's no reason to believe that you're  
00:14:56 16 going to catch up. A marathon runner that gets a mile  
00:14:59 17 head start, there's no reason to believe that you would  
00:15:02 18 ever catch up to that marathon runner, if y'all are both  
00:15:06 19 kind of equal kind of people, you're going to stay  
00:15:08 20 behind.

00:15:09 21 Q. Okay. So getting -- not getting a promotion two  
00:15:14 22 years, you know, late or two years early will impact the  
00:15:18 23 amount of money you get throughout the rest of your  
00:15:21 24 career?

00:15:21 25 A. Absolutely.

00:15:21 1 Q. Okay. So go ahead.

00:15:24 2 A. And then, the second scenario was assuming no  
00:15:27 3 tenure is ever granted but she continues at the salary  
00:15:32 4 level of an assistant professor, and that means that --  
00:15:38 5 and the university's not going to let her continue as an  
00:15:41 6 assistant professor forever. It's an up or out kind of  
00:15:48 7 situation: Either you get granted tenure or you go  
00:15:50 8 somewhere else. But we're just -- I'm using the salary  
00:15:56 9 of an assistant professor that's the level of money that  
00:15:58 10 she would make for test of her career.

00:16:00 11 So in that case, you have the same losses to  
00:16:03 12 the date of trial, 44,501, but her future losses are  
00:16:08 13 substantially more because the salary as an assistant  
00:16:13 14 professor is substantially less than that of an  
00:16:16 15 associate professor. So that's 508,000 for a total of  
00:16:20 16 552.

00:16:22 17 Q. Okay. So again, her losses to the date of trial  
00:16:26 18 of not getting that -- the raise that you get as an  
00:16:30 19 assistant professor is 44,500, but then, it's going to  
00:16:33 20 impact her into the future to the tune of around  
00:16:36 21 500,000. Go ahead with scenario three.

00:16:40 22 A. Then the third assumption -- and this is kind of  
00:16:43 23 a tricky one. Assuming that no tenure is ever granted  
00:16:47 24 and she terminates on August 31, 2023, when she doesn't  
00:16:53 25 get tenure next year, and she finds no substantially

00:16:58 1 equivalent employment, again, her losses to the date of  
00:17:02 2 trial are 44,500. The future losses in this case, the  
00:17:08 3 assumption is she doesn't have any earnings after 2023.

00:17:13 4 So you've got a big number of 3,978,000 and for a  
00:17:20 5 total losses of 4,022,000. Now, that is a kind of a  
00:17:27 6 wild assumption because nobody is not going to work  
00:17:31 7 after age -- after 2023. But I was asked to do this on  
00:17:37 8 the basis that the court could determine if she is not  
00:17:42 9 able to find substantially equivalent employment, if she  
00:17:45 10 has to go out and be a greeter at Wal-Mart, do we even  
00:17:50 11 consider that, those earnings if she's not able to  
00:17:54 12 consider substantially equivalent employment.

00:17:57 13 And I'm not up here to have any opinion  
00:18:00 14 about whether that's correct or not. I'll let the  
00:18:03 15 lawyers.

00:18:04 16 Q. So the idea would be if you are a professor and  
00:18:08 17 your job is essentially ruined and you won't be able to  
00:18:11 18 be a professor in another year, then are you, you know  
00:18:17 19 -- do you then have to take something less?

00:18:19 20 A. Right.

00:18:19 21 Q. And, you know, and so, if you don't have to take  
00:18:23 22 something less, that would be the numbers; is that  
00:18:26 23 right?

00:18:26 24 A. That's correct.

00:18:26 25 Q. Take a lower type of job.

00:18:36 1           You've also done a separate calculation. This is  
00:18:42 2   on page 2 of this exhibit. And can you explain that?

00:18:49 3       A. And all I could tell you is, I've added four  
00:18:52 4   years, four-point-something years to that to take the  
00:18:55 5   losses out to age 70. So the losses to the date of  
00:18:58 6   trial are identical. The future losses are somewhat  
00:19:03 7   hard and the some total losses are somewhat higher.

00:19:07 8       Q. Okay. And just we're not going to go into it,  
00:19:10 9   but to show the jury, this is.

00:19:18 10      A. These are my year-by-year calculations of how  
00:19:23 11   these different scenarios work.

00:19:25 12      Q. Okay. And this is the actual data and the  
00:19:28 13   calculations?

00:19:29 14      A. Yes.

00:19:29 15      Q. Applying interest rates, those kinds of things;  
00:19:32 16   is that right?

00:19:33 17      A. Yes.

00:19:33 18      Q. And you've got those --

00:19:34 19      A. They'll put you -- if you have insomnia, this  
00:19:36 20   will put you to sleep in a hurry.

00:19:39 21      Q. Okay. So just before I let you go, I believe  
00:19:50 22   that the defendants, U.T., have an economist similar to  
00:19:57 23   you. Certainly not as good as you. I'm joking. That's  
00:20:00 24   a joke -- who will be making some criticisms of your  
00:20:05 25   report and challenging some things in your report.

00:20:07 1 A. He's going to hurt my feelings a lot if he does.

00:20:10 2 Q. Okay. What is your response to the criticism  
00:20:14 3 that you believe he'll make?

00:20:15 4 A. Well, I've looked at them briefly, and I know one  
00:20:20 5 of his comments was, I didn't use market rates of  
00:20:22 6 interest. Well, I did use market rates of interest.  
00:20:26 7 I've looked them up yesterday and they're the current  
00:20:30 8 rates that those are being paid on United States  
00:20:33 9 treasury bonds mature out for the next 40 or 50 years.

00:20:38 10 Another one was, he didn't like the fact that I  
00:20:41 11 didn't let her catch up. We talked about that a minute  
00:20:44 12 ago. He says eventually, she's going to catch up to the  
00:20:48 13 guy that was granted tenure four years before, but  
00:20:51 14 that's just not right. You are at a place where you  
00:20:56 15 are, and unless one of you screws up, y'all are both  
00:20:59 16 going to keep going up the salary ladder. And I can't  
00:21:03 17 really remember anything substantive else that he  
00:21:06 18 complained about.

00:21:07 19 Q. All right. Your Honor, Mr. Glass, I have no  
00:21:11 20 further questions. Pass the witness.

00:21:22 21 CROSS-EXAMINATION

00:21:22 22 BY MR. DOWER:

00:21:33 23 Q. Dr. Glass, while I'm getting set up here, do you  
00:21:35 24 remember, we had a trial together a few years ago?  
00:21:39 25 Actually, it was in 2018?

00:21:41 1 A. I don't recall.

00:21:41 2 Q. You don't recall. I must not have been memorable  
00:21:45 3 then. Well, I'll just represent to you, I have a  
00:21:48 4 Bachelor of Science in Economics, and talking to you is  
00:21:54 5 like the only time I ever get to use it. So I'm going  
00:21:56 6 to enjoy our conversation very much.

00:22:19 7 So let's start with your scenario one. I'll  
00:22:25 8 go ahead and pull it up on the computer so that we're  
00:22:30 9 both looking at it. Okay. I can zoom in a little bit,  
00:22:51 10 but do you see this as your scenario one?

00:23:00 11 A. Okay.

00:23:00 12 Q. All right. So just want to make sure I  
00:23:04 13 understand what you did. So scenario one assumes that  
00:23:08 14 she's granted tenure on September 1st, 2023, correct?

00:23:12 15 A. Yes.

00:23:12 16 Q. And so, you calculate the difference between what  
00:23:17 17 she is making to what you believe that she would be  
00:23:21 18 making if she -- if she had received tenure, correct?  
00:23:28 19 If she had received tenure in February of 2019.

00:23:31 20 A. Okay. Just let me say that the base case is that  
00:23:34 21 she was granted -- that she would have been granted  
00:23:37 22 tenure in 2019. And then, scenario one is, she didn't  
00:23:43 23 get granted tenure in 2019, but would get granted tenure  
00:23:48 24 in 2023.

00:23:50 25 Q. Okay. Thank you for that. That's much clearer



00:23:53 1 than what I said. So on August 31st, 2020, your base  
00:23:58 2 case is your assumption about what she would have made  
00:24:03 3 had she received tenure back in February of 2019.

00:24:08 4 A. That's right. She would have been making one  
00:24:11 5 thirty-five-hundred if she'd been granted tenure. She's  
00:24:14 6 not going to be making but 114 because she didn't get  
00:24:17 7 tenure.

00:24:17 8 Q. So the difference between -- I guess the amount  
00:24:20 9 of money that you project her getting as a result of  
00:24:23 10 tenure is \$16,000 more or less?

00:24:27 11 A. Yes. 15,861. Yes.

00:24:30 12 Q. So \$15,000, it's, what, roughly ten percent of  
00:24:35 13 the salary?

00:24:37 14 A. Never was good with numbers, but that sounds  
00:24:39 15 right.

00:24:41 16 Q. And you got the bump, your projection of how much  
00:24:46 17 her salary would go up, from another faculty member,  
00:24:51 18 correct?

00:24:51 19 A. From another what?

00:24:52 20 Q. From another faculty member?

00:24:53 21 A. Yes.

00:24:54 22 Q. And so, the plaintiffs provided you with that  
00:24:59 23 faculty member and that number, correct?

00:25:00 24 A. That's correct.

00:25:01 25 Q. And you don't know whether that's representative

00:25:03 1 of how much of a bump people would generally get, right?

00:25:09 2 A. I do not know that.

00:25:10 3 Q. Could be more?

00:25:12 4 A. Could be.

00:25:13 5 Q. And presumably, the plaintiff's counsel only  
00:25:15 6 picked a cheap one, right?

00:25:17 7 A. Yes.

00:25:17 8 Q. And so, then, at some point under scenario one,  
00:25:22 9 you have her actually getting tenure on September 1st,  
00:25:26 10 2023, correct?

00:25:27 11 A. Yes.

00:25:28 12 Q. And so, if we assume that that brings her up with  
00:25:33 13 a peer in the department who got tenured the same time  
00:25:37 14 she did, then that would close the damages.

00:25:43 15 A. No, because of the four-year lag. I mean, the  
00:25:47 16 person that got tenure in 2019 will have gotten  
00:25:53 17 substantial raises before 2023.

00:25:57 18 Q. And your --

00:25:58 19 A. But she's not going to start off at that same  
00:26:00 20 level. She's going to.

00:26:01 21 Q. Why do you believe that?

00:26:07 22 A. I don't have any reason not to believe that. If  
00:26:10 23 it's somebody that has been promoted four years before  
00:26:12 24 me, if I get promoted to that same job, I've got to  
00:26:17 25 believe that because of their experience in that job,

00:26:20 1 they will have achieved raises over and above what I'm  
00:26:26 2 going to start out in.

00:26:26 3 Q. All right. And if you had at -- you didn't look  
00:26:29 4 at U.T.'s, like, historical data, correct?

00:26:32 5 A. Yes.

00:26:32 6 Q. Okay. And if you had looked at that data, we  
00:26:37 7 could determine whether or not U.T. is one of the  
00:26:39 8 unusual employers that will bring you right on par with  
00:26:44 9 people, regardless of when they got tenure.

00:26:47 10 A. I don't know that.

00:26:48 11 Q. Okay.

00:26:55 12 A. What you're trying to tell me is that all  
00:26:57 13 associate professors are paid the same amount of money.

00:27:00 14 Q. If it were true that associate professors are  
00:27:04 15 effectively paid, you know, within one percent of each  
00:27:08 16 other and that it's not correlated with the time they  
00:27:10 17 got tenure, then if that were true, then the losses are  
00:27:14 18 cut off at the point at which she gets tenure.

00:27:16 19 A. I think that would be true, yes.

00:27:22 20 Q. Okay. And just because I recognize economic  
00:27:29 21 jargon is confusing and I spent four years struggling  
00:27:33 22 with it as an undergraduate, just to use your metaphor,  
00:27:36 23 your metaphor was a runner that if someone else got a  
00:27:40 24 head start, you're not going to catch up even if you get  
00:27:43 25 the promotion, right?

00:27:44 1 A. That was my metaphor.

00:27:47 2 Q. Right. So if U.T. -- it's going to be clunky,  
00:27:50 3 but if U.T. got a helicopter and picked up someone from  
00:27:53 4 the racetrack and plopped them right next to that other  
00:27:56 5 person who got, you know, tenured before them such that  
00:27:59 6 they were on the same place on the racetrack, then the  
00:28:02 7 damages are just, you know, for the time before tenure's  
00:28:07 8 granted.

00:28:07 9 A. And you're going to take that same helicopter and  
00:28:10 10 pick everybody up and move them all up to where they all  
00:28:13 11 cross the finish line at the same time.

00:28:15 12 Q. Every time they get a bump from assistant to  
00:28:18 13 associate or associate to full?

00:28:19 14 A. Yeah. If they've got that helicopter, you're  
00:28:22 15 right.

00:28:25 16 Q. So scenario one had two permutations, and the  
00:28:36 17 only difference between them is the work life expectancy  
00:28:40 18 -- whether or not she would work till 65 and some change  
00:28:43 19 versus 70.

00:28:44 20 A. Yes.

00:28:44 21 Q. You're not offering an opinion about which of  
00:28:47 22 those is more likely?

00:28:49 23 A. No.

00:28:50 24 Q. And you're not -- so then, your scenario two is  
00:28:54 25 based on her working as an assistant professor for the

00:28:59 1 rest of her career?

00:29:01 2 A. At the salary level as an assistant professor for  
00:29:05 3 the rest of her career.

00:29:06 4 Q. And so, you understand that she can't work as an  
00:29:09 5 assistant professor at U.T. for the rest of her career  
00:29:11 6 because of the up-or-out system, but this scenario  
00:29:14 7 assumes that it's the equivalent in terms of pay.

00:29:17 8 A. Yes.

00:29:18 9 Q. Now, let's say -- you know, because you're a  
00:29:24 10 damages guy, so the jury's only talking about this if  
00:29:27 11 they find for Dr. Nikolova on the -- her claims,  
00:29:32 12 correct?

00:29:32 13 A. Right.

00:29:32 14 Q. All right. So let's just assume that and  
00:29:35 15 obviously I'm not conceding anything. Let's assume  
00:29:37 16 that. What happens if the jury awards the money under  
00:29:42 17 scenario two and then, U.T. gives her tenure in a few  
00:29:45 18 years?

00:29:45 19 A. She's just got a windfall.

00:29:47 20 Q. Yeah. So everything -- all of the rest of that  
00:29:50 21 money is, as you said, just pure windfall. It is money  
00:29:53 22 she's going to get basically a double recovery, right?

00:29:56 23 A. Yeah.

00:29:56 24 Q. And under scenario three, it's an even bigger  
00:30:02 25 windfall, right?

00:30:03 1 A. Absolutely.

00:30:04 2 Q. In fact, it's almost \$4 million windfall.

00:30:07 3 A. Yes.

00:30:14 4 Q. I'll pass the witness.

00:30:20 5 THE COURT: Anything else, Mr. Schmidt?

00:30:23 6 MR. SCHMIDT: Yes. Couple of quick

00:30:24 7 questions.

00:30:24 8 RE-DIRECT EXAMINATION

00:30:24 9 BY MR. SCHMIDT:

00:30:30 10 Q. First of all, Dr. Glass, on Mr. Dower's  
00:30:42 11 helicopter analogy, is the assumption that he's asking  
00:30:49 12 you to make is that all U.T. professors make the same  
00:30:52 13 salary?

00:30:52 14 A. Yes.

00:30:53 15 Q. So that no one else -- there's no change in  
00:30:57 16 salaries. Everybody all stays constant. Once you  
00:30:59 17 become a professor, you all make the same salary,  
00:31:01 18 there's no raises, no nothing over the next --

00:31:03 19 A. Well, everybody gets equivalent raises, too, I  
00:31:07 20 guess, is what he's kind of saying.

00:31:09 21 Q. But under this situation, for you to ever catch  
00:31:11 22 up, you know, under normal real life situation, if I  
00:31:18 23 make \$100,000 now and somebody else makes \$150,000 now,  
00:31:23 24 the only way -- and then, next year, we get a raise and  
00:31:27 25 I get 125 and he gets or she gets 175, there's still

00:31:32 1 going to be that gap that keeps going, correct?

00:31:35 2 A. Yes. But he's trying to say that she's going to  
00:31:40 3 get promoted to the same salary level that a four-year  
00:31:44 4 associate professor is going to make whenever she gets  
00:31:47 5 tenure, and that's what I just don't think is going to  
00:31:50 6 happen.

00:31:50 7 Q. Right. So she'll get -- she's not going to get  
00:31:54 8 promoted to the salary level of somebody up there.

00:31:57 9 A. Right.

00:31:57 10 Q. On this windfall situation, if we are only asking  
00:32:00 11 the jury to look at the backpay damages up through the  
00:32:04 12 date of trial, there's not a windfall.

00:32:07 13 A. That's correct.

00:32:08 14 Q. Okay. Thank you very much. No further  
00:32:10 15 questions.

00:32:13 16 THE COURT: Anything further, Mr. Dower?

00:32:15 17 MR. DOWER: No, your Honor.

00:32:16 18 THE COURT: Thank you, sir. You may step  
00:32:17 19 down.

00:32:18 20 THE WITNESS: Thank you. Thank y'all for  
00:32:21 21 listening.

22

23

24

25

**EXHIBIT B****Dr. Nikolava's Losses****Projected Retirement at Age 65.6****Losses to Age 65.6**

Scenario	Losses to Date of Trial	Future Losses	Total Losses	
1. Tenure was not granted on 9/1/2019, but assuming Tenure is granted effective 9/1/2023	(44,500)	(274,001)	(318,501)	Attachment 1
2. Assuming no Tenure is ever granted, but she continues as Assistant Professor	(44,500)	(508,016)	(552,516)	Attachment 2
3. Assuming no Tenure is ever ganted and she terminates 8/31/2023, and finds no substantially equivalent employment	(44,500)	(3,978,294)	(4,022,794)	Attachment 3



**Dr. Nikolava's Losses**  
**Projected Retirement at Age 70**

**Losses to Age 70**

Scenario	Losses to Date of Trial	Future Losses	Total Losses	
1. Tenure was not granted on 9/1/2019, but assuming Tenure is granted effective 9/1/2023	(44,500)	(331,505)	(376,005)	Attachment 1
2. Assuming no Tenure is ever granted, but she continues as Assistant Professor	(44,500)	(620,196)	(664,697)	Attachment 2
3. Assuming no Tenure is ever ganted and she terminates 8/31/2023 and finds no substantially equivalent employment	(44,500)	(4,901,286)	(4,945,787)	Attachment 3

**EXHIBIT C****Table 1.**

<b>ID</b>	<b>Gender</b>	<b>Date Joined Faculty</b>	<b>Extension Year</b>	<b>First Prob. Year</b>	<b>Second Prob. Year</b>	<b>Third Prob. Year</b>	<b>Fourth Prob. Year</b>	<b>Fifth Prob. Year</b>	<b>Years in Rank</b>	<b>Accelerated Tenure Review?</b>
ns22375	Male	1/16/2011	2015	2011-2012	2012-2013	2013-2014	2014-2015	<b>2016-2017*,**</b>	6.5	<b>No</b>
ad32385	Male	7/1/2011	2014	2011-2012	2012-2013	2013-2014	<b>2015-2016*</b>	2016-2017**	6	<b>No</b>
vj239	Male	9/1/2011	2015	2011-2012	2012-2013	2013-2014	2014-2015	<b>2016-2017*,**</b>	6	<b>No</b>
Dr. Nikolova	Female	1/1/2014	2015	2014-2015	<b>2016-2017*</b>	2017-2018	2018-2019**		5.5	<b>Yes</b>

\* Previous year does not count for probationary period because of extension

\*\* Year considered for tenure

DEFENDANT'S  
EXHIBIT

**50**

**Table 2.**

Population	Gender	Department Committee Recommends For Tenure			College Committee Recommends For Tenure			College Committee Recommends Against Tenure		
		Total	Denied Tenure	% Denied Tenure	Total	Denied Tenure	% Denied Tenure	Total	Granted Tenure	% Granted Tenure
Decisions prior to 2018-2019	Women	20	2	10.0%	17	1	5.9%	3	2	66.7%
	Men	63	7	11.1%	58	4	6.9%	6	2	33.3%
All Decisions, except Dr. Nikolova	Women	24	2	8.3%	21	1	4.8%	3	2	66.7%
	Men	73	7	9.6%	68	4	5.9%	6	2	33.3%
All Decisions	Women	25	3	12.0%	22	2	9.1%	3	2	66.7%
	Men	73	7	9.6%	68	4	5.9%	6	2	33.3%

**Notes:**

- 1) There are a total of 102 cases for which the Department and College recommendations were provided, 87 of these were prior to 2018-2019.
- 2) The Department Committees recommended denying tenure in four cases, all prior to 2018-2019 and all were denied tenure.
- 3) The College Committee recommended a "Tie" in three cases, all prior to 2018-2019 and all were denied tenure.

Table 3.

Gender	Decisions prior to 2018-2019			All Decisions, except Dr. Nikolova			All Decisions			All Decisions + Those Who Left Prior to Tenure Review		
	% Granted			% Granted			% Granted			% Granted		
	Total	Tenured	Tenure	Total	Tenured	Tenure	Total	Tenured	Tenure	Total	Tenured	Tenure
Women	21	18	85.7%	25	22	88.0%	26	22	84.6%	30	22	73.3%
Men	66	56	84.8%	76	66	86.8%	76	66	86.8%	90	66	73.3%

**Table 4.**

Date of Tenure Denial	9/1/2019
Date of Tenure	9/1/2023
Employer Contribution to Retirement	7.5%

Expected Future Salaries as of:	9/1/2019	9/1/2023
Base Case: Tenured on 9/1/2019	\$129,500	\$149,314
Scenario 1: Tenured on 9/1/2023	\$114,639	\$146,665

Promotion increase	16.35%
Within-Rank Growth	4.86%
Catch-up growth	0.63%

Year Starting	Growth/ Expected	Base Case	Scenario 1	Loss	Retirement	Total Loss	Discount	Present
	Growth				Contribution		Factor	Value
9/1/2019		\$129,500	\$114,639	(\$14,861)	(\$1,115)	(\$15,976)	100.00%	(\$15,976)
9/1/2020	0.00%	\$129,500	\$114,639	(\$14,861)	(\$1,115)	(\$15,976)	100.00%	(\$15,976)
9/1/2021	4.86%	\$135,794	\$120,210	(\$15,583)	(\$1,169)	(\$16,752)	99.98%	(\$16,748)
9/1/2022	4.86%	\$142,393	\$126,053	(\$16,341)	(\$1,226)	(\$17,566)	99.76%	(\$17,524)
9/1/2023	4.86%	\$149,314	\$146,665	(\$2,649)	(\$199)	(\$2,847)	99.06%	(\$2,820)
9/1/2024	4.86%	\$156,570	\$154,713	(\$1,857)	(\$139)	(\$1,996)	97.75%	(\$1,951)
9/1/2025	4.86%	\$164,180	\$163,203	(\$977)	(\$73)	(\$1,050)	95.83%	(\$1,006)
9/1/2026	4.86%	\$172,159	\$172,159	\$0	\$0	\$0	93.55%	\$0
Total Lost Compensation								(\$72,001)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

EVDOKIA NIKOLOVA ) Docket No. A 19-CA-877 RP  
 )  
vs. ) Austin, Texas  
 )  
UNIVERSITY OF TEXAS )  
AT AUSTIN ) March 10, 2022

TRANSCRIPT OF TRIAL TESTIMONY OF DONALD DEERE  
BEFORE THE HONORABLE ROBERT L. PITMAN

APPEARANCES:

For the Plaintiff: Mr. Robert W. Schmidt  
Crews Law Firm, P.C.  
701 Brazos Street, Suite 900  
Austin, Texas 78701

Mr. Robert S. Notzon  
Law Office of Robert Notzon  
1502 West Avenue  
Austin, Texas 78701

For the Defendant: Mr. Benjamin L. Dower  
Ms. Amy S. Hilton  
Texas Attorney General's Office  
300 West 15th Street  
Austin, Texas 78701

Court Reporter: Ms. Lily Iva Reznik, CRR, RMR  
501 West 5th Street, Suite 4153  
Austin, Texas 78701  
(512) 391-8792

Proceedings reported by computerized stenography,  
transcript produced by computer-aided transcription.

1 THE COURT: Mr. Dower.

00:00:01 2 MR. DOWER: Yes, your Honor. Defendant  
00:00:19 3 calls Donald Deere.

00:00:43 4 THE COURT: Good afternoon, sir. Before  
00:00:45 5 taking a seat, if I could get you to raise your right  
00:00:47 6 hand to be sworn.

00:00:48 7 THE CLERK: You do solemnly swear or affirm  
00:00:48 8 that the testimony which you may give in the case now  
00:00:48 9 before the Court shall be the truth, the whole truth,  
00:00:54 10 and nothing but the truth?

00:00:54 11 THE WITNESS: I do.

00:00:55 12 THE COURT: Feel free to take off your mask  
00:00:57 13 if you're comfortable doing so.

00:01:02 14 DONALD DEERE, called by the Defendant, duly sworn.

00:01:02 15 DIRECT EXAMINATION

00:01:02 16 BY MR. DOWER:

00:01:04 17 Q. Good afternoon, Dr. Deere.

00:01:08 18 A. Good afternoon.

00:01:11 19 Q. Can you start out by introducing yourself to the  
00:01:13 20 jury, please?

00:01:14 21 A. Sure. My name is Donald Deere. I have a Ph.D.  
00:01:18 22 in Economics from Massachusetts Institute of Technology.  
00:01:22 23 I was on the faculty at Texas A & M University in  
00:01:25 24 economics for 24 years, the last 17 with tenure. I  
00:01:29 25 retired from that and I now do economic consulting on a

00:01:33 1 full or sometimes part-time basis.

00:01:35 2 Q. And were you retained in this case on behalf of  
00:01:43 3 U.T. Austin?

00:01:43 4 A. I was.

00:01:44 5 Q. And to do what?

00:01:45 6 A. To respond to the reports of both Dr. Thompson  
00:01:50 7 and Dr. Glass, and to provide my own assessment of the  
00:01:54 8 statistical issues involved -- involving the claims of  
00:01:59 9 Dr. Nikolova with regard to tenure and, also, to provide  
00:02:02 10 my own assessment of the damages if it were the case  
00:02:07 11 that the jury found for Dr. Nikolova.

00:02:10 12 Q. And do you believe that your professional  
00:02:13 13 experience and background in economics and statistics  
00:02:17 14 equip you to make those opinions?

00:02:19 15 A. I do.

00:02:19 16 Q. At this point, we would tender Dr. Thompson as an  
00:02:24 17 expert in labor economics and statistics.

00:02:27 18 MR. NOTZON: He can't because that's Dr.  
00:02:29 19 Deere.

00:02:30 20 MR. DOWER: I'm sorry. What did I --

00:02:31 21 THE COURT: Dr. Thompson.

00:02:33 22 MR. DOWER: I'm sorry.

00:02:34 23 MR. NOTZON: No objection.

00:02:36 24 MR. DOWER: I'm living in the past  
00:02:37 25 obviously.



00:02:38 1 THE WITNESS: It's okay.

00:02:39 2 Q. (BY MR. DOWER) So sorry, Dr. Deere. All right.  
00:02:42 3 Well, with that, I want to pick up where we left off,  
00:02:48 4 which was talking about -- well, where we left off.  
00:02:53 5 Where we left off with Dr. Glass when we were talking  
00:02:57 6 about that his scenario one. And his -- what is his  
00:03:05 7 scenario one -- I'll bring it up just a moment. What is  
00:03:46 8 his scenario one based on?

00:03:48 9 A. Well, his scenario one is -- assumes that given  
00:03:54 10 Dr. Nikolova did not receive tenure in 2019 that she  
00:03:58 11 would, instead, receive tenure in 2023. And he  
00:04:02 12 calculates the -- essentially the difference in earnings  
00:04:05 13 between those two scenarios: One, she was tenured in  
00:04:11 14 '19 and continued on. The other, she would be not  
00:04:15 15 tenured in '19 but tenured in 2023 and continue on. And  
00:04:19 16 I believe this scenario one is to the age of about 65,  
00:04:24 17 her expected work life based on the sources that Dr.  
00:04:28 18 Glass cited.

00:04:30 19 Q. And I'm going -- or what assumption -- and you  
00:04:34 20 heard him testify here today, correct?

00:04:36 21 A. Yes.

00:04:37 22 Q. What assumption did he make about her salary  
00:04:41 23 after she is granted tenure on September 1st, 2023?

00:04:47 24 A. Well, he essentially assumes that salaries would  
00:04:50 25 be like an escalator. You know, you're -- tenure's

00:04:54 1 delayed two or three years, so you're on a step two or  
00:04:58 2 three below. And then, from then on, you're just always  
00:05:01 3 below. And so, that's -- in a nutshell, I'd say that's  
00:05:07 4 his assumption.

00:05:08 5 Q. I'm going to show you Defendant's Exhibit 62.  
00:05:15 6 This is data for salary in the Cockrell School of  
00:05:20 7 Engineering going back as far as back as 2009 to 2010.  
00:05:26 8 Do you see this?

00:05:26 9 A. I do. Sort of.

00:05:28 10 Q. All right. Let me zoom in a little bit.

00:05:30 11 A. There you go. That's a little better.

00:05:32 12 Q. So what are in the -- is in the left-hand column?

00:05:40 13 A. The names of faculty is in column A.

00:05:43 14 Q. And the column B?

00:05:48 15 A. That's their -- it says faculty rank, but that's,  
00:05:51 16 you know, professor, assistant professor, associate  
00:05:53 17 professor as of the end of the academic year spring  
00:05:56 18 2019.

00:05:57 19 Q. And then, column C?

00:06:00 20 A. The date that their Ph.D. was awarded.

00:06:03 21 Q. Column D?

00:06:04 22 A. The year since.

00:06:05 23 Q. Okay. And this skips ahead for ease of reference  
00:06:11 24 but -- and then, what are columns -- I guess, just  
00:06:15 25 column O and then on?

00:06:16 1 A. Those are salaries for those particular  
00:06:19 2 individual faculty members for those particular academic  
00:06:23 3 years.

00:06:23 4 Q. And do you see that the numbers are color-coded?  
00:06:27 5 We've got red, we've got green and we've got black?

00:06:31 6 A. Yes. I see that.

00:06:32 7 Q. Okay. So I'm going to cut to the chase and do  
00:06:37 8 you see this -- it's called a legend that tells us what  
00:06:41 9 the color-coding means?

00:06:42 10 A. Yes.

00:06:42 11 Q. Okay. And so, can you just explain or put on the  
00:06:47 12 record what the different colors mean?

00:06:49 13 A. So the font that would be black would be  
00:06:52 14 someone's salary while they're an assistant professor.  
00:06:55 15 The font green would be -- faculty member's salary while  
00:06:59 16 that person was an associate professor. Red would be  
00:07:01 17 the font for the salary while that person was a  
00:07:03 18 professor. And purple would be the font while that  
00:07:07 19 person was both a professor and a chair of their  
00:07:10 20 department.

00:07:12 21 Q. And so, for example, if we were to look at  
00:07:19 22 someone -- let's do one of the more recent ones like Dr.  
00:07:31 23 Ranjuit Gharpurey. And I apologize if I'm messing that  
00:07:33 24 up. Do you see that that doctor went from green to red  
00:07:42 25 between academic years 2013 to '14 and then, academic

00:07:45 1 years '14 to '15?

00:07:47 2 A. Yes.

00:07:47 3 Q. And so, what does that signify to you?

00:07:50 4 A. Could you go back down to the bottom? I read it.

00:07:54 5 Yeah, that green to red is associate professor to

00:07:58 6 professor.

00:07:59 7 Q. Okay. And so, just to take an example, so then

00:08:06 8 what would -- I'm going to call him Dr. G just to avoid

00:08:17 9 me butchering his name. What would it signify to go

00:08:20 10 from green to red between these two salaries?

00:08:23 11 A. To be promoted from associate professor to full

00:08:26 12 professor.

00:08:26 13 Q. Okay.

00:08:27 14 A. Or to professor.

00:08:28 15 Q. And if we go down a couple cells, we see Dr.

00:08:34 16 Garg. Do you see that?

00:08:36 17 A. Yes.

00:08:36 18 Q. And what is his salary in 2014 to '15?

00:08:41 19 A. \$128,479.

00:08:44 20 Q. And then -- and how long had he been a full

00:08:50 21 professor to the extent we can tell?

00:08:53 22 A. At least, what, five, six -- he's in at least his

00:08:56 23 sixth year because he's got red font all the way back to

00:08:59 24 the first year of visible.

00:09:01 25 Q. And so, it could be even farther back than that.

00:09:04 1 A. Yes.

00:09:04 2 Q. Okay. And so, he's making roughly \$28,000 -- or,  
00:09:11 3 excuse me, \$128,000 in 2014-'15, correct?

00:09:17 4 A. Yes. 128,479 to be exact.

00:09:21 5 Q. Okay. And then, Dr. G is -- he is promoted to a  
00:09:30 6 full professor as of that year for the first time,  
00:09:33 7 correct?

00:09:35 8 A. Yes. Appears that way.

00:09:37 9 Q. Yes. And what is his salary?

00:09:39 10 A. 128,370.

00:09:43 11 Q. And so, what is the difference between these two  
00:09:46 12 roughly?

00:09:48 13 A. \$109.

00:09:50 14 Q. Out of -- and so, that's -- what would you put  
00:09:52 15 that just roughly in percentage terms?

00:09:55 16 A. One-tenth of one percent.

00:09:57 17 Q. Okay. And so, from this -- so from this specific  
00:10:01 18 example, and we can look at some others, how does that  
00:10:04 19 work -- how does that fit with the escalator that he  
00:10:09 20 were on?

00:10:10 21 A. That suggested that you can jump up steps. As  
00:10:15 22 you said, Professor G on row 34 is promoted years later  
00:10:21 23 than Professor Garg on row 36, but in 2014-15, the year  
00:10:26 24 that the first Professor G is promoted, they're making  
00:10:30 25 virtually the identical salaries.

00:10:32 1 Q. Let's look at some associate professors. So, for  
00:10:37 2 example, so Nan Sun goes from black to green between the  
00:10:48 3 years 2016-'17 to '17-'18, correct?

00:10:51 4 A. Yes.

00:10:51 5 Q. And so, remind us, what does that signify?

00:10:55 6 A. That's the promotion from assistant professor to  
00:10:57 7 associate professor, and I would almost be certain  
00:11:01 8 that's also with tenure.

00:11:02 9 Q. And so, what are those -- what jump was  
00:11:07 10 associated with that?

00:11:08 11 A. Well, it's an almost \$11,000 jump, around 10  
00:11:13 12 percent.

00:11:13 13 Q. Okay. And so, that puts Dr. Sun at 119K more or  
00:11:22 14 less.

00:11:22 15 A. 119,240. Yes.

00:11:26 16 Q. Thank you. And so -- and that's actually more  
00:11:28 17 than some of the other assistant -- or that's actually  
00:11:33 18 more than some of the other associate professors,  
00:11:35 19 correct?

00:11:36 20 A. Yes. On rows -- the one you highlighted are 65,  
00:11:41 21 row 66, row 67, those three individuals were promoted a  
00:11:46 22 few years earlier, and they're making less in 2017-'18  
00:11:50 23 than is Dr. Sun.

00:11:53 24 Q. And I don't want to be accused of cherry-picking.  
00:11:56 25 So is there another example that we could look at right

00:12:01 1 now that similarly emphasizes this point?

00:12:05 2 A. Well, you happen to have highlighted row 61.

00:12:10 3 Yes. Dr. Dimakis is promoted effective '15-'16, goes  
00:12:16 4 from 101,0 50 to 112,100. And that 112,000 is virtually  
00:12:23 5 identical to the several green rows below it for people  
00:12:26 6 who were promoted one or more years earlier.

00:12:31 7 Q. And so, looking at these examples, and I think  
00:12:34 8 there's still others but I won't belabor the point, were  
00:12:38 9 you in the courtroom when I used my rather clumsy  
00:12:41 10 helicopter analogy?

00:12:43 11 A. I was.

00:12:43 12 Q. Okay. So what did you understand that analogy to  
00:12:46 13 mean?

00:12:46 14 A. Well, I think you were suggesting that this is --  
00:12:49 15 what you see here is possible. In other words, that  
00:12:53 16 it's not like you -- your promotion comes two years  
00:12:56 17 later, so you're forever behind the people who were  
00:12:59 18 promoted two years before. This suggests that you're  
00:13:03 19 promoted two years later and you're paid virtually  
00:13:06 20 identically to the people who were promoted one or two  
00:13:09 21 or three years earlier.

00:13:10 22 Q. So was Dr. Glass' assumption about how U.T.  
00:13:15 23 structures their promotions correct based on this  
00:13:19 24 empirical data?

00:13:21 25 A. Well, this certainly is a counterexample

00:13:24 1 inconsistent with that assumption, I would say.

00:13:26 2 Q. And this is specific to the -- these are Cockrell  
00:13:31 3 School of Engineering professors, correct?

00:13:32 4 A. Faculty, yeah. These are actually assistant to  
00:13:35 5 associate, but yes.

00:13:36 6 Q. Let's take a step back, then, and talk about Dr.  
00:13:44 7 Thompson and we'll come back to Dr. Glass. So talking,  
00:13:52 8 then, about Dr. Thompson, I'm going to show you the  
00:13:58 9 reports or the charts that he had and then, we can talk  
00:14:01 10 about them. So I'm showing you Plaintiff's Exhibit 237.

00:14:08 11 Were you in the courtroom when Dr. Thompson  
00:14:10 12 testified?

00:14:11 13 A. I was.

00:14:13 14 Q. Could you tell us, what does his table 1 reflect?

00:14:22 15 A. His table 1 is a comparison of the percentage of  
00:14:32 16 female assistant professors who are reviewed early for  
00:14:33 17 tenure compared to the percentage to male assistant  
00:14:36 18 professors who were reviewed early for tenure.

00:14:39 19 Q. Do you agree that this testimony has bearing on  
00:14:43 20 Dr. Nikolova's case?

00:14:45 21 A. No.

00:14:46 22 Q. Well, why not?

00:14:47 23 A. Well, this table, and as Dr. Thompson testified,  
00:14:51 24 shows that to the percentage of women who went up early  
00:14:55 25 is noticeably lower, statistically significantly lower



00:14:58 1 than the percentage of men who were put up early. But  
00:15:02 2 Dr. Nikolova went up early so, you know, her -- nothing  
00:15:08 3 prevented her from going up early. So the fact that  
00:15:10 4 this is showing that at least some women went up -- were  
00:15:14 5 less likely to go up early, it doesn't seem to apply to  
00:15:16 6 her.

00:15:22 7 Q. Let's move on then to tables 2 and 3. Again,  
00:15:28 8 these are not your tables. These are Dr. Thompson's  
00:15:30 9 tables. What do you recall of his testimony about these  
00:15:36 10 two tables?

00:15:38 11 A. Well, table 2 was -- again, these are votes of  
00:15:42 12 the departmental, what's called the budget committee or  
00:15:47 13 -- I'm not sure the C stands for committee, but the  
00:15:50 14 budget group, the people in the department -- the other  
00:15:53 15 faculty in the department who were making a -- reviewing  
00:15:55 16 and making a recommendation, a vote whether to -- in  
00:15:58 17 favor of tenure or not. And, you know, this shows that  
00:16:02 18 those who receive a heavy, very high fraction of the  
00:16:06 19 vote are quite likely to get tenure, and those who  
00:16:09 20 receive lower fraction of the vote don't get tenure. Or  
00:16:13 21 flipping it around, the ones who don't get tenure didn't  
00:16:16 22 get as many votes as the ones who do get tenure.

00:16:18 23 Q. In your opinion, does this testimony and this  
00:16:22 24 data have any bearing on the question of whether U.T.  
00:16:25 25 Austin discriminated against Dr. Nikolova on the basis

00:16:27 1 of pregnancy or sex?

00:16:28 2 A. No, because this table, there's nothing on here  
00:16:32 3 about gender, or sex, or pregnancy. It's just -- it's  
00:16:38 4 about the votes and whether you get -- whether  
00:16:42 5 promotions are denied or made.

00:16:45 6 Q. And so, looking at this, can we infer anything  
00:16:50 7 about why U.T. Austin did not grant early tenure to Dr.  
00:16:54 8 Nikolova in 2019?

00:16:56 9 A. I don't think so.

00:16:57 10 Q. And do you know whether women are included in  
00:17:01 11 this data?

00:17:02 12 A. They are. In fact, in table 3, those 62 that got  
00:17:07 13 100 percent vote, again, this is from the college  
00:17:09 14 committee, and again, 100 percent of those were given  
00:17:14 15 tenure. This is, again, before Dr. Nikolova's case, 16  
00:17:20 16 of those 62 are women. So there's plenty of women in  
00:17:22 17 those data who are 100 percent vote and also get tenure.

00:17:28 18 Q. Well, I should take a step back. Did you review  
00:17:32 19 the same data that Dr. Thompson reviewed in forming  
00:17:37 20 these opinions?

00:17:37 21 A. Yes.

00:17:38 22 Q. Okay. And so, when you say, you know, that the  
00:17:41 23 women were included in that 13, what is that based on?

00:17:47 24 A. I didn't say the 13. I said the 62.

00:17:49 25 Q. Excuse me. The 62. I apologize.

00:17:51 1 A. Sixteen of the 62 are women. The 13, I'm not --  
00:17:55 2 I don't recall the gender breakdown there, but the  
00:17:57 3 relevant point, I think, is because, you know, Dr.  
00:18:02 4 Thompson pointed out that before you know Dr. Nikolova's  
00:18:05 5 case, 62 out of 62 who got 100 percent vote got tenure.  
00:18:09 6 You know, he likened it to the sun coming up in the  
00:18:12 7 morning.

00:18:13 8 Q. Do you agree with that?

00:18:13 9 A. Well, 62 out of 62 is 100 percent. I'll give you  
00:18:17 10 that. But there's a lot of women in there. So I  
00:18:21 11 understand Dr. Nikolova, disappointed and shocked that  
00:18:26 12 she didn't get tenure, but this doesn't suggest that it  
00:18:28 13 was -- gender was the cause.

00:18:29 14 Q. Well, let's talk about the data that you looked  
00:18:32 15 at and your statistics. So I want to move on from Dr.  
00:18:36 16 Thompson's tables unless there's anything you'd like to  
00:18:39 17 add about this before I move on.

00:18:42 18 A. No, sir.

00:18:43 19 Q. Okay.

00:18:43 20 A. You're driving.

00:18:46 21 Q. Let's go, then, to your data. So first of all,  
00:19:12 22 did you generate table two of Defendant's Exhibit 50?

00:19:16 23 A. Yes, I did.

00:19:16 24 Q. Okay. And so, help us understand. Walk us  
00:19:20 25 through what this table reflects.

00:19:23 1 A. Sure. There are three pairs of rows. We'll  
00:19:26 2 start with the first two up at the top that say the  
00:19:28 3 population there. So that's decisions prior to  
00:19:31 4 2018-'19. That was the same group that Dr. Thompson  
00:19:36 5 focused on with those 62 votes. Or, you know, the 62,  
00:19:41 6 100 percent votes. And what I've done here is one row  
00:19:44 7 for women, one row for men. And I've got three sets of  
00:19:48 8 columns where I report then a number of people and then,  
00:19:53 9 a percentage of what happened to them.

00:19:54 10 So the first set of columns there, department  
00:19:57 11 committee recommends for tenure. And so, what I'm  
00:20:01 12 looking at there is, given the department recommended  
00:20:04 13 for tenure, the normal cases get tenure, so the question  
00:20:08 14 is, how often did someone not get tenure despite the  
00:20:11 15 fact that their department recommended them for tenure?  
00:20:14 16 And so, there were 20 cases there for women that where  
00:20:20 17 the department recommended for tenure, and of those, 22  
00:20:24 18 women were denied tenure. This is again before Dr.  
00:20:27 19 Nikolova's case.

00:20:27 20 Q. How many women were denied tenure?

00:20:29 21 A. Two.

00:20:30 22 Q. Oh, two. Thank you, sir.

00:20:32 23 A. And that two out of 20 is the ten percent you see  
00:20:34 24 in the percent denied tenure column.

00:20:36 25 Q. Okay. So 20 went up, two were denied and

00:20:41 1 that's --

00:20:42 2 A. If I may. Twenty were recommended. There were  
00:20:45 3 more that went up. There's a footnote there that the  
00:20:47 4 department committee recommended nine -- tenure in four  
00:20:50 5 cases. All four were denied tenure. Ultimately, those  
00:20:54 6 aren't really interesting and don't tell you anything.  
00:20:56 7 So these are the ones that tell you something where the  
00:20:59 8 final decision differed from what the department  
00:21:02 9 recommended.

00:21:02 10 Q. Thank you for correcting me. Okay. And so,  
00:21:06 11 then, what about the men for department committee  
00:21:10 12 recommends for tenure?

00:21:11 13 A. Right. And the comparison -- there were 63 men,  
00:21:13 14 so a little over three times as many that were  
00:21:17 15 recommended by the department, and a total of seven of  
00:21:20 16 those 63 were ultimately denied tenure. And so, that  
00:21:24 17 rate of denial or percentage denied is 11.1 percent and  
00:21:28 18 that -- it's slightly bigger than but it's not  
00:21:31 19 statistically different from the 10 percent for women.  
00:21:34 20 So there's no statistical difference here in the  
00:21:38 21 fraction of women and men who are denied tenure amongst  
00:21:42 22 those women and men who were recommended for tenure by  
00:21:44 23 their department.

00:21:47 24 Q. Okay. So then, let's stick with this row -- or,  
00:21:52 25 excuse me, this column for now. So that was for

00:21:55 1 decisions prior to 2018 to '19. And then, next you do  
00:21:58 2 it again; this time, all decisions, except for Dr.  
00:22:02 3 Nikolova. Why rerun it that way?

00:22:05 4 A. Well, I rerun it with more decisions to take it  
00:22:08 5 through all the data we had. And I specifically exclude  
00:22:13 6 Dr. Nikolova, who is included in the last row, I'll say,  
00:22:15 7 but is out of this row. And the idea is, if something  
00:22:23 8 bad happens to you and you say it's because of your  
00:22:26 9 gender, well, we know something bad happened to you and  
00:22:29 10 we know what your gender is, but the issue of whether  
00:22:31 11 the causation is gender, you want to look at other  
00:22:35 12 people who share that characteristic with you, all  
00:22:38 13 women. And what I've done here is just take Dr.  
00:22:41 14 Nikolova out of it to see how does it look for all women  
00:22:44 15 but her. And then, I'm going to put her back in so that  
00:22:47 16 we look at all women together. But that's sort of the  
00:22:50 17 idea to get an idea of, well, what was it like for  
00:22:51 18 everyone else with regard to gender.

00:22:52 19 Q. And so, looking at that data, what did you  
00:22:55 20 determine?

00:22:57 21 A. It's the same process. You know, there were more  
00:22:59 22 who were recommended for tenure. It's exactly the same  
00:23:03 23 numbers who were denied, the two and the seven. So the  
00:23:06 24 percentages are somewhat lower. Again, the 8.3 percent  
00:23:09 25 of the 24 women, excluding Dr. Nikolova, were denied and

00:23:14 1 9.6 percent of the 73 men were denied. And again, the  
00:23:18 2 8.3 percent and the 9.6 percent is not statistically  
00:23:23 3 different. So there's -- again, that comparison there  
00:23:26 4 provides no evidence that gender is related to the  
00:23:30 5 tenured decision, given the department's recommendation.

00:23:33 6 Q. When you say not statistically significant or no  
00:23:36 7 statistical difference, can you just break that down in  
00:23:38 8 sort of common basic English? What does that mean?

00:23:41 9 A. Well, yeah. I mean, if you had -- the easiest  
00:23:47 10 thing to think about is flipping a coin, okay? You've  
00:23:50 11 got six coins and you're going to flip them, you expect  
00:23:53 12 three heads and three tails, but you're not really  
00:23:55 13 surprised if you get two heads and four tails or four  
00:23:58 14 heads and two tails. And so, there's a little bit of  
00:24:01 15 luck involved. And so, when we compare statistics, we  
00:24:04 16 want to say, well, you know, I don't want to say they're  
00:24:07 17 different if it's just kind of random chance. However,  
00:24:10 18 if you flip six coins and all six are heads or all six  
00:24:13 19 are tails, that's kind of surprising. That happens, you  
00:24:16 20 know, well less than five percent of the time and so --

00:24:19 21 Q. Can you make sure you're speaking into the mic.

00:24:22 22 A. Sure. If you flip it six times and you get all  
00:24:27 23 heads or all tails, that's pretty unlikely. And in  
00:24:30 24 fact, that's so unlikely, you would -- from based on  
00:24:32 25 that evidence, you would say, well, I'm not so sure

00:24:35 1 that's a fair coin, that it really is a 50/50 coin.

00:24:38 2           So that's what we're doing with statistical  
00:24:42 3 significance is we say, I look at the process as if it  
00:24:45 4 were neutral and with respect to in this case gender.  
00:24:47 5 And then, you say, well, how did it come out? Did it  
00:24:50 6 come out pretty much even, in which case we go, well,  
00:24:53 7 there's no evidence that it was related to gender? Or  
00:24:55 8 did it come out that women were treated much, much  
00:24:57 9 better or women had much, much better outcomes or much,  
00:25:02 10 much worse outcomes, then we would say, well, the  
00:25:02 11 evidence suggests there's something going on unrelated  
00:25:05 12 to gender. And here, we're on the side of there's  
00:25:07 13 really no difference. If anything, it's higher for  
00:25:11 14 women, but that's really nothing. That's just again  
00:25:13 15 like the two heads and a four tails.

00:25:15 16           So that's what I mean. Is that -- are you  
00:25:19 17 good?

00:25:19 18           Q. I liked it. Now, what about if there's only a  
00:25:24 19 very, very small -- I don't know whether I'm using the  
00:25:27 20 word "population" correctly, but what if you only had,  
00:25:30 21 for example, two women that went up in a period of five  
00:25:35 22 years because, let's say, we were only looking at one  
00:25:38 23 department, and so, there was a very small population of  
00:25:41 24 data.

00:25:42 25           A. Sometimes you don't have enough data to be able



00:25:46 1 to say anything. In other words, if you had very, very,  
00:25:49 2 very few women to go up for tenure, you really wouldn't  
00:25:52 3 be able to say something about women. You could say  
00:25:55 4 something about those two women. So it's like with the  
00:25:56 5 coins. If you only had two and you flip them both and  
00:25:59 6 you happen to get two heads, you're still not that  
00:26:01 7 surprised. You just don't have enough coins -- enough  
00:26:04 8 flips of that coin to decide whether you think it's fair  
00:26:07 9 or not. So you need more information. And so, if you  
00:26:12 10 don't have enough information, it can be difficult to  
00:26:16 11 find any statistical significance.

00:26:18 12 Q. All right. Let's move on, then, to the last row  
00:26:24 13 in this department committee recommends for tenure  
00:26:28 14 analysis.

00:26:29 15 A. Sure. And again, this is all decisions, so it's  
00:26:32 16 one more decision includes Dr. Nikolova's case. And so,  
00:26:35 17 there's, you know, one more woman recommended by the  
00:26:37 18 department, and one more woman who is denied tenure  
00:26:40 19 ultimately. So the row for women is 25 and with three  
00:26:45 20 denied for 12 percent denial rate, compared to the men's  
00:26:49 21 row the same as above, 73 men -- 79, 9.6. Now the 12  
00:26:54 22 percent is bigger than the 9.6, but it's not  
00:26:57 23 statistically different. Again, this is kind of the  
00:26:59 24 four heads, two tails kind of case.

00:27:01 25 Q. So then, next you looked at it -- what do the

00:27:07 1 statistics look like if the college committee recommends  
00:27:11 2 for tenure. Is that correct?

00:27:12 3 A. Yes. It's a similar kind of idea, but now I  
00:27:16 4 looked at it both ways. You'll see the first set -- the  
00:27:19 5 middle set of columns there for the college is the  
00:27:21 6 college recommends for tenure and then, how often did  
00:27:26 7 the university ultimately deny. And then, the other  
00:27:31 8 side of that reverse, which is the last -- the last set  
00:27:38 9 of columns is the college committee recommends against  
00:27:41 10 tenure, but the university granted it, anyway, okay? So  
00:27:47 11 both kinds of -- the university doesn't agree with the  
00:27:51 12 college. That's the point here. And how does that  
00:27:53 13 relate to or how does that compare with gender?

00:27:57 14 And again, it's the same set of comparisons.  
00:28:00 15 The first row is going to be prior to Dr. Nikolova's  
00:28:03 16 case. The second case is all cases except her. And the  
00:28:05 17 last row is including her case. And the pattern in the,  
00:28:10 18 you know, the university denied when the college  
00:28:12 19 committee recommends for tenure, it's, you know -- let  
00:28:17 20 me just do the -- first row is 17 women recommended for,  
00:28:21 21 one denied, so that's 5.9 percent. Comparison, 58 men  
00:28:26 22 recommended, four denied, 6.9 percent. So again, the  
00:28:30 23 5.9 and the 6.9 are not identical, but they're close  
00:28:34 24 enough that we say there's no evidence it's -- you know,  
00:28:36 25 it's not statistically significant related to gender.

00:28:40 1 When we look at all decisions except Dr.  
00:28:43 2 Nikolova, very similar pattern, you know, 5.9 percent  
00:28:46 3 denial rate for men, 4.8 percent, a lower denial rate  
00:28:50 4 for women, but again, no statistical difference. When  
00:28:52 5 we add Dr. Nikolova's case, you know, she's one out of  
00:28:54 6 22 women, she is denied. So that raises that percentage  
00:28:58 7 a noticeable amount to 9.1 percent, two out of 22 women  
00:29:01 8 and for men, four out of 68 men. And so, the 9.1  
00:29:05 9 percent for women is higher than the 5.9, but it is not  
00:29:09 10 statistically significantly higher. So there's, you  
00:29:12 11 know, from the statistician point of view, those data do  
00:29:17 12 not provide evidence that gender was related to or  
00:29:21 13 significantly at least related to the reversal of the  
00:29:26 14 college's recommendation.

00:29:29 15 Q. So that was for the -- when the college committee  
00:29:31 16 recommends for tenure. What about when they recommend  
00:29:34 17 against tenure?

00:29:35 18 A. When they recommend against tenure, it doesn't  
00:29:37 19 happen as often, but the university also doesn't always  
00:29:40 20 take that recommendation. So you can see there -- all  
00:29:43 21 the rows are the same because, you know, Dr. Nikolova  
00:29:48 22 didn't affect this column. She was recommended and, in  
00:29:51 23 fact, all the decisions after -- her case and after also  
00:29:55 24 don't affect it. It's a grand total of nine that were  
00:29:58 25 -- where the college committee recommended against,

00:30:01 1 three women and six men, and of those three women, the  
00:30:06 2 university reversed it and granted tenure in two of the  
00:30:09 3 three cases. And for the six men, it also granted  
00:30:13 4 tenure in two of the six cases. So the percentages are  
00:30:15 5 66 and 33, two thirds and one third. But again, this is  
00:30:20 6 back to your question earlier, it's such a small sample.  
00:30:24 7 We only have nine cases. We just don't have an  
00:30:26 8 ability -- even though 33 and 66 look like they're a  
00:30:29 9 long way apart, you know, it's just really, you know,  
00:30:31 10 one or two people. So it's still not statistically  
00:30:34 11 significantly different.

00:30:37 12 So the bottom line on this whole table is, there  
00:30:40 13 is no statistical evidence for a relationship between  
00:30:44 14 gender and the tenure decision given the department  
00:30:48 15 and/or the college's recommendation.

00:30:50 16 Q. And why did you even look at the college and  
00:30:55 17 department committees at all?

00:30:57 18 A. Well, this is playing off of Dr. Thompson's  
00:31:01 19 table, you know, his tables 2 and 3 were about votes at  
00:31:06 20 these committees, right? And so, you know, she was  
00:31:11 21 recommended by her department and she was recommended by  
00:31:14 22 the college but ultimately didn't get it, so, you know,  
00:31:16 23 we want to see if that is gender related. I was doing  
00:31:23 24 the gender comparison that Dr. Thompson did not do.

00:31:28 25 Q. Well, let's go, then, to your third chart or your

00:31:31 1 third table. What does this reflect?

00:31:35 2 A. It's a little bit broader. It's just looking at  
00:31:41 3 the tenure decision. Ignores -- as you suggested,  
00:31:44 4 ignores whether the department or the college  
00:31:47 5 recommended or not. It's just asking bottom line: What  
00:31:49 6 fraction of women get tenure? What fraction of men get  
00:31:52 7 tenure? And so, does it -- this is now the groups are  
00:31:56 8 going across the page. The first comparison there is,  
00:31:58 9 again, prior to Dr. Nikolova's case. There were 21  
00:32:02 10 women considered, 18 tenured. There were 66 men  
00:32:07 11 considered, 56 tenured. And those two percentages are  
00:32:11 12 very, very close. 85.7 for women and 84.6 percent for  
00:32:16 13 men are the percentages granted tenure. The women  
00:32:19 14 slightly bigger than the men but, again, no statistical  
00:32:21 15 difference.

00:32:23 16 Q. And then, the next column.

00:32:25 17 A. The next column includes all the decisions,  
00:32:29 18 excluding Dr. Nikolova, consistent with the way I'd  
00:32:34 19 broken it down before, 22 of 25 women are -- extends to  
00:32:38 20 the full-time period, 22 of 25 women were granted  
00:32:41 21 tenure; that's 88 percent. Sixty-six of 76 men granted  
00:32:45 22 tenure; that's 86.8 percent. Again, very similar  
00:32:49 23 numbers. No statistical difference.

00:32:52 24 And then, the last one includes Dr. Nikolova so  
00:32:55 25 the number of women considered goes up -- you've gotta

00:33:00 1 scoot it over a little bit more. There we go. The  
00:33:04 2 number of -- okay. All decisions, this is the third  
00:33:08 3 column. The number of women considered there, the 26 is  
00:33:11 4 one more than the 25. That's Dr. Nikolova. And so, 22  
00:33:15 5 out of 26 is 84.6 percent. And the 66 out of 76 for men  
00:33:20 6 is 86.8 percent.

00:33:22 7 So again, now the women's number is slightly  
00:33:25 8 lower than the men's, but there's a not a statistical  
00:33:27 9 difference between those two. You know, the data don't  
00:33:30 10 support a conclusion that gender is related to the  
00:33:35 11 granting of tenure.

00:33:36 12 Q. And what about this last column, all decisions  
00:33:40 13 plus those who left prior to tenure review?

00:33:43 14 A. Yeah. This looks a little bit broader because --  
00:33:46 15 you know, I haven't seen any of the testimony, really,  
00:33:48 16 other than the experts, but there's universities  
00:33:52 17 typically have a thing, a third-year review. And also,  
00:33:54 18 as you're working through tenure, you can be -- it can  
00:33:59 19 be suggested that maybe you should find someplace else  
00:34:02 20 to teach.

00:34:03 21 So to the extent that women were encouraged or --  
00:34:08 22 to leave or were told at the third-year review, it's not  
00:34:11 23 going well and they left, the tenure numbers could look  
00:34:13 24 good for women because all the ones who weren't going to  
00:34:15 25 get tenure left earlier. So this puts everybody in the

00:34:18 1 pot who comes in the door as an assistant professor and  
00:34:21 2 says when you start out as an assistant, I want to know  
00:34:23 3 what happens to you. You either get tenure or you  
00:34:25 4 don't.

00:34:26 5 Some of the ones who don't left before they were  
00:34:28 6 denied. Some of the ones who don't were denied. But  
00:34:31 7 it's a broader comparison and would not be affected by  
00:34:35 8 any differential decisions to leave early or being  
00:34:39 9 encouraged to leave early. And so, in that case, you  
00:34:41 10 know, it's a little more expanded pool, right? There's  
00:34:44 11 30 total women, 90 total men, exactly three to one.  
00:34:48 12 And the percentage ultimately tenured, whether they were  
00:34:50 13 -- the ones who weren't tenured were, again, they denied  
00:34:53 14 or left is 22 women and 66 men. That's also exactly  
00:34:58 15 three to one.

00:34:58 16 So in this particular case, and this includes Dr.  
00:35:02 17 Nikolova, the percentages are identical, the fraction of  
00:35:06 18 women and the fraction of men who came in the door as  
00:35:08 19 assistant professors in this time period, the same  
00:35:12 20 percentages were ultimately granted tenure by the  
00:35:16 21 University of Texas.

00:35:28 22 Q. Anything else you want to tell us about table 3  
00:35:32 23 before I move on?

00:35:33 24 A. No.

00:35:33 25 Q. Okay. All right. Now, I think we've moved on

00:35:39 1 from Dr. Thompson now to address Dr. Glass' testimony,  
00:35:44 2 and we already talked a little bit about this. But what  
00:35:47 3 did you do in computing her -- Dr. Nikolova's damages  
00:35:52 4 model?

00:35:54 5 A. Again, Dr. Glass had three scenarios. I  
00:35:59 6 basically took his first scenario and did it somewhat  
00:36:03 7 differently. That's the one where she -- instead of  
00:36:06 8 getting tenure in September -- effective September 1,  
00:36:09 9 2019 her, tenure would be -- becomes effective September  
00:36:13 10 1st, 2023. So, you know, year and a half from now. And  
00:36:17 11 that she works until about age 65 and so, that's -- I  
00:36:25 12 took his scenario one and I -- you'll notice there for  
00:36:28 13 the row with the base case if you can sort of highlight  
00:36:31 14 that up under expected future salaries near the top.  
00:36:50 15 The data at the top says denied tenure September 1st,  
00:36:54 16 '19. Alternative assumption date of tenure is going to  
00:36:57 17 be 9-1-2023. I adopted the same assumption as Dr. Glass  
00:37:02 18 for the employee contribution to retirement  
00:37:05 19 seven-and-a-half percent. So now, the base case had she  
00:37:08 20 been tenured September 1st, 2019, I have her with a  
00:37:13 21 salary of 129,500. And then, I have her salary in that  
00:37:20 22 case that would have -- by September 1st of 2023, I have  
00:37:24 23 that her salary would have grown to 149,314 by September  
00:37:31 24 1st of 2023, had she received tenure in September of  
00:37:35 25 '19.



00:37:36 1 And Dr. Glass used a number of 130,500. I used a  
00:37:41 2 thousand dollars less than that. His number actually  
00:37:44 3 comes from the salary of a particular faculty member  
00:37:47 4 promoted at that particular time. I think it's a Dr.  
00:37:51 5 Tiwari. And if you look, the increase that Dr. Nikolova  
00:37:55 6 would have received to get to the 129,5 would have been,  
00:38:00 7 as I note two rows below, 16.35 percent, which is larger  
00:38:04 8 than every other promotional increase we see in the data  
00:38:07 9 from the Cockrell School of Engineering, except for one.  
00:38:09 10 Most of the promotional increases are around 10, 11  
00:38:13 11 percent.

00:38:13 12 Q. So just to be clear, you looked at multiple  
00:38:16 13 professors who were promoted from assistant to associate  
00:38:19 14 and looked at how much a percentage increase they  
00:38:22 15 experienced.

00:38:22 16 A. Yes. And as I said, most of the time, that was  
00:38:25 17 between -- close to 12 percent. Between 10 and 12  
00:38:27 18 percent and -- but I looked, you know, Professor Tiwari  
00:38:32 19 made about \$4,000 more than Nikolova in 2018, and if you  
00:38:38 20 looked in, you know, the lack of escalator, the data we  
00:38:41 21 were looking at a minute ago, you could see that there  
00:38:43 22 was a tendency to get pretty close to people's pay that  
00:38:48 23 were all promoted at the same time. We didn't focus on  
00:38:50 24 that, but it's also in those data.

00:38:52 25 So I saw several other cases or at least a couple

00:38:55 1 of other cases where people promoted the same year who  
00:38:57 2 were paid differently as assistants made within a  
00:39:00 3 thousand dollars of each other as associates, but didn't  
00:39:03 4 make exactly the same. So that's what I did for Dr.  
00:39:05 5 Nikolova. I assumed it would get to 129,5, within a  
00:39:09 6 thousand dollars of Professor Tiwari. So that's where  
00:39:11 7 the 129,5 comes, and I note that it's a 16.35 percent  
00:39:15 8 increase over her prior year salary, which, as I said,  
00:39:19 9 is larger than every other promotional increase in those  
00:39:22 10 data, except for one.

00:39:23 11 Q. So you're doing a similar elevator but the gap  
00:39:27 12 starts out pretty small, and then, it closes over a  
00:39:30 13 period of time or how would you --

00:39:31 14 A. Well, I wouldn't do that. I would say -- so I  
00:39:36 15 assume that had she gotten tenure, it was 129,5. That's  
00:39:39 16 what she would have had when she was tenured. The row  
00:39:42 17 right below that is, she didn't get tenure, so her  
00:39:45 18 salary was actually 114,639 that it, in fact, was.  
00:39:49 19 Okay. And now, I think what we want to do is, we can  
00:39:53 20 switch to the bottom so we can look at it year by year  
00:39:56 21 so there -- so the first row there September 1st, '19,  
00:40:03 22 that's the 129,5 had she received tenure. And her  
00:40:08 23 actual salary, given she did not receive tenure,  
00:40:11 24 114,639. And then, that year, virtually everyone in  
00:40:17 25 school got a zero percent increase. That was, I think,

00:40:20 1 COVID issues and all. Also, that was a raise pull that  
00:40:25 2 year, folks. There wasn't one essentially.

00:40:25 3 Q. There wasn't an estimate. At this point, you're  
00:40:27 4 looking at the actual data.

00:40:28 5 A. I'm looking at the actual data under scenario  
00:40:31 6 one, yes. Her actual salary was, again, the same the  
00:40:34 7 next year as virtually everyone's in the college was.  
00:40:36 8 And so, in the "but for" case, had she been tenured and  
00:40:40 9 moved to 129,5, I assumed, well, you know, again, you  
00:40:43 10 would not have gotten an increase -- she would not have  
00:40:45 11 gotten an increase that year.

00:40:47 12 And then, for each of the subsequent years, the  
00:40:51 13 growth and the base case is 4.86 percent, and that's  
00:40:55 14 actually higher than Dr. Glass assumed, but that's the  
00:40:58 15 average within rank increase in the data that you and I  
00:41:01 16 looked at a minute ago. And so, the average annual  
00:41:05 17 increase -- not counting the 19200. That would have  
00:41:08 18 pulled it down. But in the other years, it was about a  
00:41:10 19 4.86 percent increase. So I said that's about on  
00:41:13 20 coverage how your salary goes up when you don't get a  
00:41:16 21 promotion.

00:41:16 22 And so, that's what we're doing until, you  
00:41:20 23 know, you can see few rows down for September 1st, 2023,  
00:41:27 24 so there, Dr. Nikolova gets about a \$20,000 increase,  
00:41:32 25 okay, from 126 to 146. That's the promotion in this --

00:41:37 1 in the new world. The assumption is, she will be -- or  
00:41:40 2 these calculations are made assuming that she receives  
00:41:43 3 tenure and promoted to associate professor September 1st  
00:41:47 4 of 2023. And that's back to that 16.35 percent  
00:41:51 5 increase. So I used the same percentage increase that I  
00:41:53 6 had used before.

00:41:54 7 And then, you'll note, you can see it right  
00:41:57 8 at the top of the page there, it says catch-up growth.  
00:42:01 9 So the top of the screen. I'm sorry. It was there.  
00:42:11 10 See where it says within rank row 4.86 percent and then,  
00:42:15 11 catch-up growth, .63 percent. That is the amount of  
00:42:21 12 growth that I assume she experiences over the 24 -- over  
00:42:26 13 the subsequent three years to catch her up to where she  
00:42:29 14 would have been.

00:42:30 15 So if you look at the last row on the table  
00:42:32 16 at the bottom, September 1st of 2026, I have her earning  
00:42:38 17 172,159. If she had received tenure back in '19 and I  
00:42:43 18 have also have her catching up to that same spot if she  
00:42:48 19 receives tenure in 2023. And so, part of the reason for  
00:42:53 20 my assuming the catch-up is, as you said, if you look in  
00:42:57 21 the data, it's not an escalator-type world. It's also  
00:43:01 22 the case that there's a substantial amount of data.

00:43:05 23 And this was what I cited in my report from  
00:43:08 24 the Bureau of Labor Statistics. Every two years, they  
00:43:12 25 survey what's called displaced workers, people who have

00:43:15 1 lost a job, and they look at whether those people are  
00:43:18 2 reemployed, and if they're reemployed, how much they're  
00:43:20 3 earning relative to the job they left. And within three  
00:43:24 4 years -- because the average is from one to three years.  
00:43:27 5 Within three years, over half of the individuals who are  
00:43:31 6 reemployed are now earning what they otherwise would  
00:43:36 7 have earned on the job that they lost.

00:43:39 8 And so, there's evidence more generally  
00:43:42 9 besides just U.T.'s faculty data that Dr. Nikolova would  
00:43:46 10 be likely to catch up. And moreover, suppose Dr.  
00:43:54 11 Nikolova got fed up with U.T. and left. Go to another  
00:43:57 12 university, get tenure there, get paid in a very similar  
00:44:01 13 way, one would think. So, you know, there is a market  
00:44:06 14 there. People do leave universities and go to other  
00:44:09 15 universities and so --

00:44:11 16 MR. NOTZON: Objection, your Honor. This is  
00:44:12 17 well beyond his expertise. He didn't cite it in his  
00:44:16 18 report. There's no scientific basis for it.

00:44:18 19 THE COURT: It's not in his report?

00:44:20 20 MR. DOWER: I'm not sure off the top of my  
00:44:22 21 head, your Honor. If it's just --

00:44:23 22 THE WITNESS: Not really.

00:44:24 23 MR. DOWER: Okay. Well, then, we'll --

00:44:26 24 THE WITNESS: Sorry.

00:44:27 25 THE COURT: It's okay.

00:44:29 1 Q. (BY MR. DOWER) Okay. Anything more that you'd  
00:44:37 2 like to -- well, actually, we should probably talk a  
00:44:39 3 little bit about some of these other columns. So can  
00:44:42 4 you just explain like what does the loss column reflect?

00:44:46 5 A. The loss is the difference between the base case  
00:44:48 6 and the scenario. So that represents the amount of  
00:44:51 7 money that Dr. Nikolova would have earned had she -- or  
00:44:55 8 the estimated amount of money she would have earned had  
00:44:57 9 she received tenure in '19, compared to now receiving it  
00:45:00 10 in 2023.

00:45:01 11 Q. Is this for the year in which it appears in the  
00:45:05 12 row?

00:45:05 13 A. Yes. So in that -- for the year starting 9-1-19,  
00:45:11 14 it was a little under 15,000. Exactly the same next  
00:45:16 15 year because no raises were given anywhere. And then, a  
00:45:18 16 little bit larger and a little bit larger and it drops  
00:45:20 17 down and then, shrinks to zero.

00:45:22 18 Q. And why does it drop so dramatically?

00:45:24 19 A. Well, it drops so dramatically September 1st,  
00:45:28 20 2023 because that's the assumption as Dr. Glass made  
00:45:34 21 that she receives tenure at that point and is promoted  
00:45:36 22 to associate professor.

00:45:40 23 Q. Real quick, going back up, this says date of  
00:45:43 24 tenure denial September 1st, 2019, but we've heard  
00:45:47 25 testimony that the decision was made in February. Why

00:45:50 1 use September 1st?

00:45:50 2 A. That's when it would have taken effect. So the  
00:45:55 3 date at which the deny tenure would have been effective  
00:45:58 4 is probably a better way to say that.

00:46:00 5 Q. And so, I noticed your total loss is the sum of  
00:46:04 6 loss in retirement contribution. What does that mean?

00:46:07 7 A. Well, the retirement contribution is that  
00:46:09 8 seven-and-a-half percent because the University of Texas  
00:46:13 9 faculty have a -- they actually have one of two. They  
00:46:17 10 have a retirement system that the university contributes  
00:46:19 11 to and Dr. Glass' assumption that I adopt it was that  
00:46:24 12 seven-and-a-half percent. So the loss --  
00:46:26 13 seven-and-a-half percent of the loss column is put in  
00:46:29 14 the retirement contribution column. So that's also a  
00:46:32 15 loss. And then, adding those two together, the loss and  
00:46:35 16 the lost retirement contribution is -- gives the total  
00:46:39 17 loss in dollars for each of the years.

00:46:42 18 Q. So you're not shortchanging her the retirement  
00:46:44 19 stuff.

00:46:45 20 A. No.

00:46:46 21 Q. And what about the discount factor? What's that?

00:46:50 22 A. Well, that is very similar to what Dr. Glass  
00:46:54 23 talked about is, you know, \$100,000 or any amount of  
00:46:57 24 money in a couple of years is not worth the same as the  
00:47:00 25 amount of money now because there are interest rates.

00:47:03 1 As he explained quite well, if you want somebody to have  
00:47:06 2 100,000 in five years, you give them something less than  
00:47:08 3 that, they invest it, it grows at the interest rate, in  
00:47:12 4 five years, they've got \$100,000.

00:47:14 5 So when you're calculating what it's worth today  
00:47:18 6 of what money in the -- for those payments that she's  
00:47:20 7 going to miss in the future, you do the reverse of that.  
00:47:23 8 You sort of pull it -- you shrink it by how much the  
00:47:27 9 interest is that would have been earned, and that's what  
00:47:28 10 the discount factor is. It's based on interest rates  
00:47:32 11 and, you know, those discount factors are based on --  
00:47:38 12 they're actually -- there's a market for what's called  
00:47:42 13 strip securities from the U.S. Treasury.

00:47:44 14 You can take a treasury bond with interest coupon  
00:47:46 15 payments, physically strip those two apart, and you can  
00:47:50 16 -- essentially there's a market for -- I want to have  
00:47:53 17 \$10,000 paid to me in November of 2024, well, there's a  
00:47:56 18 market for that. And whatever the price is for \$10,000  
00:47:59 19 in November 2024, you say okay, that's what we're going  
00:48:02 20 to count as \$10,000 is worth today.

00:48:04 21 So my discount factors are based on the market  
00:48:08 22 prices at the time I wrote my report for moneys in the  
00:48:13 23 future effectively.

00:48:15 24 Q. And so, your total lost compensation, can you  
00:48:21 25 just sort of summarize, what does that reflect?



00:48:23 1 A. Well, that takes the yearly losses in the fourth  
00:48:27 2 column, the first red column, adds to them the lost  
00:48:30 3 retirement contribution, takes the total loss,  
00:48:34 4 multiplies those by the discount factor to take -- bring  
00:48:37 5 those to present value. So effectively, that's going to  
00:48:39 6 take moneys in the future and shrink them a little bit.  
00:48:43 7 And then, it's going to add all -- the present value of  
00:48:47 8 all those annual losses and that gives a total loss of  
00:48:51 9 just over \$72,000.

00:48:52 10 Q. So this is -- so this is your estimate of the  
00:48:57 11 lost compensation given this scenario and then, how much  
00:49:02 12 that would be worth if she were to get the money today  
00:49:06 13 effectively.

00:49:06 14 A. Yes.

00:49:24 15 Q. Do you have any other comments or response to Dr.  
00:49:27 16 Glass' scenario one?

00:49:30 17 A. No.

00:49:31 18 Q. Okay. Well, so we don't have a chart for it, but  
00:49:35 19 for Dr. Glass' scenario two, do you believe that --

00:49:39 20 A. I'm sorry. Can I change my answer?

00:49:41 21 Q. Sure.

00:49:42 22 A. Because remember Dr. Glass' scenario one and two  
00:49:46 23 sub-scenarios to 65 and to 70. For -- there's catchup,  
00:49:51 24 it's not going to matter. But in his assumption where,  
00:49:54 25 you know, you're on an escalator and you never catch up,

00:49:58 1 it matters -- as you could see, it matters whether you  
00:50:00 2 take it to 65 or you take it to 70. And I hope I am as  
00:50:04 3 in as good a shape as he is when I'm his age, but most  
00:50:07 4 people don't work to 70, not even necessarily most  
00:50:11 5 faculty. There are tables from -- as he cites in his  
00:50:13 6 report that calculate expected remaining work life by  
00:50:16 7 education and age and gender, and that is, as he  
00:50:20 8 reports, 65 or 65 and change years for Dr. Nikolova.

00:50:25 9 So I don't -- even if you believe that there was  
00:50:28 10 the escalator problem that there's a gap that's going to  
00:50:31 11 last forever, I think it would stop at age 65, not at  
00:50:35 12 age 70.

00:50:35 13 Q. If Dr. Nikolova said that she wants to work to  
00:50:38 14 70, does that change that opinion at all?

00:50:41 15 A. No. I don't think so. I mean, I understand --

00:50:43 16 Q. Why not?

00:50:44 17 A. I understand and people say things. And one of  
00:50:46 18 the aspects -- it's just based on statistics and life  
00:50:49 19 spans and what the observed behavior of people of those  
00:50:54 20 ages and those education levels and those genders, so  
00:50:57 21 it's a population average. Doesn't mean she couldn't,  
00:50:59 22 but it means that, you know, sort of the likely or  
00:51:02 23 expected outcomes is 65 years.

00:51:05 24 Q. Anything about -- anything else about scenario  
00:51:10 25 one?

00:51:10 1 A. No.

00:51:10 2 Q. Okay. If you change your answer again, just let  
00:51:14 3 me know. So scenario two for Dr. Glass was that Dr.  
00:51:20 4 Nikolova continues in a nontenured position at U.T.  
00:51:23 5 Austin. Do you have an opinion about whether Dr. Glass  
00:51:26 6 understates or overstates Dr. Nikolova's earning losses  
00:51:30 7 in that scenario?

00:51:31 8 A. Well, I think he understates them. I mean, as he  
00:51:34 9 admitted, you know, she couldn't stay in an untenured  
00:51:37 10 position at U.T. That's against the rules. But she  
00:51:40 11 could move on somewhere else. Well, if she's going to  
00:51:42 12 move on somewhere else, you know, if you're worthy of  
00:51:45 13 tenure at U.T., you can certainly -- that's a really  
00:51:47 14 good school. You're worthy of tenure in a lot of place.  
00:51:50 15 She would move on presumably --

00:51:50 16 MR. NOTZON: Objection. Your Honor, again,  
00:51:53 17 opining as a labor expert and that's not what he's here  
00:51:57 18 to do.

00:51:57 19 THE COURT: Is that in your report, by any  
00:51:58 20 chance, Doctor?

00:52:00 21 THE WITNESS: I made some reference to it.  
00:52:05 22 I just stand by the -- sorry.

00:52:08 23 MR. DOWER: I thought it was in his report,  
00:52:10 24 but I could be wrong.

00:52:11 25 MR. NOTZON: Whether it's in his report or

00:52:12 1 not, he's not a labor expert. He has no evidence or  
00:52:17 2 expertise and the employability of a professor at  
00:52:21 3 another university.

00:52:22 4 MR. DOWER: I tendered him as an expert in  
00:52:23 5 labor economics and didn't get an objection.

00:52:26 6 MR. NOTZON: Economics, but not whether or  
00:52:28 7 not employability at another university --

00:52:30 8 THE COURT: Okay. Since it's disputed as to  
00:52:32 9 whether it's in the report, let's just move beyond.

00:52:35 10 Q. (BY MR. DOWER) Okay. To the best of your  
00:52:38 11 recollection, is there anything that's contained in your  
00:52:40 12 report about Dr. Glass' scenario two that you'd like to  
00:52:45 13 explain to the jury? If you want to refresh your  
00:52:48 14 recollection, I can hand you a copy of your report.

00:52:51 15 A. Sure. I would just read the sentence from my  
00:53:35 16 report, if I may. Under Dr. Glass' scenario two,  
00:53:41 17 further, even if Dr. Nikolova could continue at U.T.  
00:53:43 18 Austin after being denied tenure in 2023, it seems  
00:53:46 19 likely that her earnings could be higher from a tenured  
00:53:49 20 position at another university than from a nontenured  
00:53:51 21 position at U.T. Austin.

00:53:55 22 MR. NOTZON: Your Honor, my objection stands  
00:53:57 23 as to the employability and the likelihood. He makes  
00:54:03 24 the assumption that she goes and gets another job based  
00:54:07 25 -- and I'll cross him on the fact that there's no

00:54:09 1 evidence behind that. That's fine. But not to testify  
00:54:12 2 about that likelihood or the ease with which she can be  
00:54:16 3 reemployed.

00:54:18 4 MR. DOWER: I think this sentence that's in  
00:54:21 5 the report is what his testimony is.

00:54:23 6 THE COURT: As long as he's sticking to his  
00:54:25 7 report, you'll have the opportunity to cross-examine him  
00:54:27 8 on whatever he's saying.

00:54:29 9 MR. NOTZON: Thank you, your Honor.

00:54:30 10 Q. (BY MR. DOWER) Finally, Dr. Deere, to the extent  
00:54:38 11 it's in the report, do you have any response to Dr.  
00:54:43 12 Glass' scenario three in which Dr. Nikolova leaves U.T.  
00:54:46 13 Austin on August 31st, 2023 and then, just has zero  
00:54:51 14 income thereafter?

00:54:53 15 A. I just note that Dr. Glass admits that that was,  
00:54:57 16 quote, an unlikely, unquote, scenario.

00:55:02 17 Q. Pass the witness.

00:55:09 18 CROSS-EXAMINATION

00:55:09 19 BY MR. NOTZON:

00:55:10 20 Q. Good afternoon, Dr. Deere.

00:55:12 21 A. Hi.

00:55:13 22 Q. So I take it from your report this is only the  
00:55:16 23 third case you've been working in the last four years?

00:55:19 24 A. No.

00:55:20 25 Q. Well, you only list two other cases in your

00:55:24 1 appendix.

00:55:24 2 A. That's testimony, right?

00:55:26 3 Q. Okay. And which party did you work for in those  
00:55:31 4 two cases? You didn't list that. Did you work for the  
00:55:35 5 plaintiff or the defendant?

00:55:37 6 A. In the AJP Oil Company case, I worked for the  
00:55:41 7 plaintiff. In the state of Texas case, I worked for the  
00:55:43 8 defense.

00:55:44 9 Q. Okay. And the --

00:55:46 10 A. No, no, no. Actually, I'm sorry, I worked for  
00:55:48 11 the state of Texas. So plaintiffs in both cases.

00:55:50 12 Q. Okay. And neither those were employment cases?

00:55:57 13 A. That is correct.

00:55:58 14 Q. Okay. And you've been doing this for how long,  
00:56:03 15 testifying as an expert in court?

00:56:07 16 A. Well.

00:56:09 17 Q. Fifteen years?

00:56:10 18 A. The first testimony, yeah, 15 or so years ago.  
00:56:14 19 I've worked in -- you know, in this doing the consulting  
00:56:16 20 work for like 31. But probably the first time I  
00:56:21 21 testified would have been, I don't know, around 2005.  
00:56:24 22 That's probably reasonable, 2007.

00:56:26 23 Q. And you heard Dr. Glass has been doing this for  
00:56:29 24 over 40 years?

00:56:30 25 A. Yes.

00:56:30 1 Q. And on the -- sticking with Glass and then, we'll  
00:56:36 2 go back to Dr. Thompson. Isn't it true, you don't have  
00:56:41 3 any evidence of how reemployable Dr. Nikolova would be  
00:56:45 4 in another university, correct?

00:56:47 5 A. Well, she changed universities once already,  
00:56:49 6 right?

00:56:51 7 Q. Sir, you don't have any evidence, any scientific  
00:56:54 8 evidence, any literature that you use to be able to  
00:56:58 9 testify about the likelihood of her reemployability in  
00:57:01 10 her current circumstances, do you?

00:57:04 11 A. No.

00:57:09 12 Q. And the unemployed data that you refer to  
00:57:11 13 differs, depending on the field of the employment,  
00:57:15 14 correct?

00:57:18 15 A. I'm not --

00:57:19 16 Q. The labor statistics you talked about?

00:57:21 17 A. Well --

00:57:22 18 Q. About the people that are unemployed and when  
00:57:24 19 they get reemployed?

00:57:25 20 A. That covers the workforce -- all the workforce.  
00:57:29 21 So that includes people who are doing quite different  
00:57:32 22 things, yes.

00:57:32 23 Q. Okay. So it's an aggregate one number?

00:57:35 24 A. Yes.

00:57:36 25 Q. Okay. So there may be differences for university

00:57:41 1 professors?

00:57:43 2 A. Certainly could be. Yes.

00:57:44 3 Q. And your catchup growth assumption there is -- is  
00:57:48 4 there any scientific or economic basis?

00:57:53 5 A. Well, I would think that --

00:57:54 6 Q. Or is it an arbitrary number?

00:57:57 7 A. Well, three years is from the Department of Labor  
00:58:02 8 Statistics.

00:58:03 9 Q. The catchup?

00:58:04 10 A. Period of the catchup. I split the growth  
00:58:06 11 equally over the three years.

00:58:08 12 Q. Okay.

00:58:10 13 A. And I would also point to the -- you know, the  
00:58:12 14 data in college that showed people, you know, aren't  
00:58:16 15 stuck on an escalator.

00:58:17 16 Q. Okay.

00:58:18 17 A. Necessarily.

00:58:19 18 Q. Yeah, that's -- that data you looked at that you  
00:58:22 19 said kind of the helicopter scenario or the  
00:58:25 20 anti-escalator evidence, that's anecdotal, right?  
00:58:30 21 That's you just kind of looked around, but you didn't  
00:58:32 22 actually do a numerical study or a statistical study of  
00:58:35 23 the salaries at U.T., correct?

00:58:39 24 A. The stuff we did online here, yes. It was just  
00:58:43 25 picking up some examples. That's true.



00:58:45 1 Q. All right. And moving on to Dr. Thompson. Isn't  
00:59:02 2 it true that the process for early tenure review that  
00:59:10 3 you discussed, you criticized Dr. Thompson because the  
00:59:14 4 decision to go up early was in part the faculty  
00:59:19 5 member's. Do you recall that criticism in your report?

00:59:22 6 A. Yes.

00:59:23 7 Q. Okay. And you had access to Professor Tewfik's  
00:59:27 8 deposition as part of your review in your report.

00:59:30 9 A. I think so. Yes.

00:59:31 10 Q. And were you here for the testimony of Professor  
00:59:35 11 Tewfik or --

00:59:36 12 A. No.

00:59:36 13 Q. Dr. Fenves?

00:59:37 14 A. No.

00:59:38 15 Q. Okay. Well, were you aware that Professor Tewfik  
00:59:43 16 in his deposition testified that to go upwardly --

00:59:47 17 MR. DOWER: I'm going to object to the  
00:59:49 18 hearsay and assume facts not in evidence. That  
00:59:51 19 deposition transcript is not in evidence.

00:59:52 20 MR. NOTZON: I'm questioning him on what he  
00:59:54 21 relied on as he reported in his report. That he has  
00:59:57 22 that deposition.

00:59:59 23 THE COURT: You can ask the question.

01:00:00 24 MR. NOTZON: Thank you.

01:00:02 25 Q. (BY MR. NOTZON) And Professor Tewfik, at page 77,

01:00:08 1 line 4 to 78, line 5, says that the basis for going  
01:00:15 2 forward has to be with the approval of the budget  
01:00:19 3 council of the department. Are you aware of that?

01:00:22 4 A. I don't doubt it.

01:00:23 5 Q. Okay. Well, so the employee can want all they  
01:00:28 6 want, but the gatekeeper is the budget council, correct?

01:00:31 7 A. That sounds right. I mean, I presume.

01:00:34 8 Q. So your criticism of Dr. Thompson, you can't say  
01:00:39 9 that this is a different disparate treatment because the  
01:00:42 10 faculty member has to choose. Well, that eliminates the  
01:00:47 11 fact that the gatekeeper's actually the budget council,  
01:00:51 12 correct?

01:00:52 13 A. I would think a faculty member could, one, ask to  
01:00:58 14 be and another one, a faculty member could probably ask  
01:01:00 15 not to be --

01:01:00 16 Q. That's true --

01:01:03 17 A. -- and that might keep the gatekeeper from going  
01:01:05 18 forward.

01:01:06 19 Q. That's true.

01:01:06 20 A. To that's kind of what I meant.

01:01:08 21 Q. And there could be a disparate impact on the  
01:01:10 22 women in that scenario, and the numbers that Dr.  
01:01:15 23 Thompson talked about discuss that. Let me ask a  
01:01:18 24 followup question.

01:01:19 25 You say that Dr. Thompson has not presented

01:01:22 1 this jury any evidence that assures them that gender was  
01:01:30 2 a factor in this case, correct?

01:01:32 3 A. I didn't say it like that. I said that gender  
01:01:35 4 was related to the tenure decision.

01:01:36 5 Q. And you also are not presenting any evidence to  
01:01:39 6 this jury that gender wasn't, correct?

01:01:46 7 A. I'm not sure how you would do that, so no.

01:01:49 8 Q. You would agree with me?

01:01:51 9 A. I just said no. I'm not presenting that kind of  
01:01:53 10 evidence.

01:01:53 11 Q. And do you understand that Dr. Nikolova is not  
01:02:01 12 saying that she was denied the ability to go up early  
01:02:07 13 and she's not saying that she was -- that all women are  
01:02:10 14 denied the ability to go up early. They're just having  
01:02:12 15 a different experience and they're retarded -- the way  
01:02:16 16 that her allegation is that women are retarded in their  
01:02:21 17 likelihood of going up early and then, when they go up  
01:02:24 18 early, they have a worse experience than the men.

01:02:27 19 So the granularity of that allegation is  
01:02:35 20 important in her claims. Do you understand that?

01:02:36 21 A. I don't. I don't recollect that granularity from  
01:02:42 22 the complaint. I just remember the complaint saying  
01:02:44 23 that it was, you know, denied tenure on the basis of  
01:02:46 24 gender and pregnancy.

01:02:48 25 Q. But your analysis discounts that and lumps her in

01:02:53 1 with all women that went up for tenure and say, look at  
01:02:58 2 this, it's just the general numbers without relevance to  
01:03:01 3 her specific experience in making it similarly situated  
01:03:06 4 to her and what she experienced. Do you see that?

01:03:12 5 A. All of the women who were assistant professors  
01:03:15 6 and all the men who were assistant professors and went  
01:03:17 7 up to tenure are in the analysis I looked at.

01:03:20 8 Q. Do you also understand that when you equate, when  
01:03:24 9 you say everybody that's recommended for tenure, that  
01:03:27 10 means every vote that's 51 percent or more, 51 to 100  
01:03:32 11 percent are lumped in together so that you eliminate the  
01:03:37 12 value of the relative vote difference, a weak vote  
01:03:41 13 versus a strong vote. You eliminate that in your  
01:03:45 14 analysis. Do you understand that?

01:03:45 15 A. Well, I mean.

01:03:46 16 Q. Yes or no?

01:03:48 17 A. No.

01:03:49 18 Q. Okay. And you kept saying this is not  
01:03:57 19 statistically important or this is not statistically  
01:04:00 20 significant, but you actually didn't do any  
01:04:03 21 statistically significance tests.

01:04:05 22 A. Yes, I did.

01:04:07 23 Q. Where are your -- you didn't do any regressions.  
01:04:10 24 You didn't -- you just did simple percentages, correct?

01:04:16 25 A. No.

01:04:16 1 Q. In your table 2?

01:04:40 2 A. One sentence in here: Again, none of the  
01:04:42 3 differences are statistically significant. So I made a  
01:04:45 4 statistical significance test.

01:04:48 5 Q. How did you do that test?

01:04:50 6 A. I did a two-by-two comparison with the Fisher's  
01:04:54 7 exact test.

01:04:55 8 Q. And what's your R squared on that?

01:04:57 9 A. R squared is irrelevant to that test. R square's  
01:05:00 10 from a regression. This isn't a regression context.

01:05:03 11 Q. And so, what level significance are you -- did  
01:05:06 12 you calculate?

01:05:07 13 A. Well, the cutoff for statistical significance is  
01:05:11 14 five percent. These numbers are well above five  
01:05:13 15 percent. I don't recall what they were, but they were  
01:05:16 16 nowhere near five percent. They need to be below five  
01:05:20 17 percent for statistical significance.

01:05:21 18 Q. But at the end of the day, you have nothing that  
01:05:30 19 removes the implication of Dr. Thompson's report that no  
01:05:38 20 one had the same experience that Dr. Nikolova had at the  
01:05:42 21 University of Texas in the statistical analysis that he  
01:05:47 22 provided, correct?

01:05:48 23 A. I think that's correct. Her experience was  
01:05:50 24 unique. Not shared by others over gender either.

01:05:56 25 Q. And you understand she's also claiming pregnancy

01:06:00 1 and not just gender.

01:06:01 2 A. Yes. There were other pregnant women, as well.  
01:06:05 3 Right.

01:06:05 4 Q. You didn't account for that in your statistic,  
01:06:08 5 did you?

01:06:08 6 A. Dr. Thompson didn't do anything with that. I saw  
01:06:10 7 no need to respond.

01:06:11 8 Q. That would be a no. You didn't do anything?

01:06:13 9 A. That would a no. Yes, sir.

01:06:15 10 Q. I'll pass the witness.

01:06:18 11 RE-DIRECT EXAMINATION

01:06:18 12 BY MR. DOWER:

01:06:27 13 Q. Earlier, you testified about the effect that  
01:06:32 14 small population sizes -- population in the statistical  
01:06:36 15 sense has on statistical significance. Do you remember  
01:06:40 16 testifying about that?

01:06:41 17 A. Yes.

01:06:42 18 Q. And so, if you look at candidates with a high  
01:06:45 19 degree of granularity, what does that do to the number  
01:06:48 20 of people you're looking at?

01:06:51 21 A. Well, it seems like you would be slicing the data  
01:06:56 22 to a very small -- compartmentalizing into small pieces  
01:07:01 23 that would be difficult to say much statistically.

01:07:04 24 Q. And if you look at it with the highest level of  
01:07:10 25 granularity, wouldn't you be looking at the candidate's

01:07:12 1 credentials?

01:07:15 2 A. Yes.

01:07:17 3 Q. And so, does that just take us out of this data  
01:07:19 4 altogether and back to their -- you know, an actual  
01:07:23 5 comparison between the strengths of the dossiers?

01:07:26 6 MR. NOTZON: Objection, your Honor. This is  
01:07:27 7 not part of his report. It's not statistical analysis.

01:07:31 8 MR. DOWER: It's in direct response to the  
01:07:33 9 cross, your Honor.

01:07:33 10 THE COURT: I'll allow it.

01:07:35 11 A. Well, yeah. You'd still take account of who got  
01:07:37 12 tenure and who didn't, and who was a woman and who  
01:07:39 13 wasn't, and who took a leave, or who was pregnant, or  
01:07:41 14 whatever, and who wasn't. So those facts wouldn't  
01:07:45 15 change, but the data you would bring to explain them  
01:07:46 16 would be a much richer set. It would include the tenure  
01:07:50 17 dossiers, research records, grant funding, service  
01:07:53 18 records, teaching records, and the like. Yeah.

01:07:56 19 Q. (BY MR. DOWER) Earlier, you were asked about  
01:08:07 20 whether or not anyone else had the experience of Dr.  
01:08:12 21 Nikolova in Dr. Thompson's data about the promotion and  
01:08:15 22 tenure committee vote. Do you remember being asked  
01:08:18 23 about that?

01:08:18 24 A. Yes.

01:08:18 25 Q. Was Dr. Nikolova uniquely a woman amongst all of

01:08:23 1 the population of data?

01:08:25 2 A. She was not the only woman. No.

01:08:26 3 Q. And was she uniquely pregnant amongst all the  
01:08:31 4 population of data?

01:08:32 5 A. Not given the number of -- I don't really know  
01:08:36 6 who was pregnant, but given the number of people what  
01:08:38 7 had a probationary extension who were women.

01:08:40 8 Q. So just looking at Dr. Thompson's statistics, can  
01:08:43 9 you infer anything one way or the other about whether  
01:08:46 10 the thing that sets Dr. Nikolova apart is pregnancy or  
01:08:50 11 gender as opposed to maybe a weakness in her  
01:08:53 12 application?

01:08:55 13 A. No.

01:08:56 14 Q. Pass the witness.

01:08:58 15 RE-CROSS EXAMINATION

01:08:59 16 BY MR. NOTZON:

01:08:59 17 Q. And you can't say that it was the weakness of her  
01:09:02 18 application either, can you?

01:09:03 19 A. No, I cannot.

01:09:05 20 THE COURT: Thank you, sir. You may step  
01:09:06 21 down.

01:09:08 22 THE WITNESS: Thanks.

01:09:10 23 THE COURT: Next witness.

01:09:12 24 MR. DOWER: The witness can step down, your  
01:09:14 25 Honor. We pass.



\* \* \* \* \*

UNITED STATES DISTRICT COURT )  
WESTERN DISTRICT OF TEXAS )

I, LILY I. REZNIK, Certified Realtime Reporter,  
Registered Merit Reporter, in my capacity as Official  
Court Reporter of the United States District Court,  
Western District of Texas, do certify that the foregoing  
is a correct transcript from the record of proceedings  
in the above-entitled matter.

I certify that the transcript fees and format comply  
with those prescribed by the Court and Judicial  
Conference of the United States.

WITNESS MY OFFICIAL HAND this the 30th day of March,  
2022.

~~~~~  
LILY I. REZNIK, CRR, RMR  
Official Court Reporter  
U.S. District Court  
Austin Division  
501 West 5th Street,  
Suite 4153  
Austin, Texas 78701  
(512) 391-8792  
SOT Certification No. 4481  
Expires: 1-31-23